ON THE

AMENDMENT

OF THE

LAW OF LUNACY.

A Letter

TO

LORD BROUGHAM

BY

A PHRENOLOGIST.

"If the mountain will not come to Mahomet, Mahomet must go to the mountain; if medical science will not adapt itself to the law, *the law must adapt itself to medical science.*"—The Jurist, March 11, 1843.

"In looking at the conflicting decisions (of the lawyers) on this point, all we can say is, that unsoundness of mind involves a morbid, or, at least, a defective condition of intellect, with an incompetency on the part of the person to manage his affairs. Neither condition will suffice without the other: for the intellect may be in a morbid state, and yet there may be no incompetency; or the incompetency may depend on bodily infirmity or a want of education, and may be purely relative—that is to say, vary with the station of the individual in society."—British and Foreign Medical Review, No. XIX., p. 130.

"In these cases" (of moral insanity, or manie sans délire), "the person manifests no mental delusion, is not monomaniacal, has no hallucination, does not confound fancies with realities, but *simply labours under a morbid state of feelings and affections*, or, in other words, *a diseased volition.*"—Winslow's Plea of Insanity in Criminal Cases, p. 34-5. 1843.

LONDON:
HENRY RENSHAW, 356, STRAND.
1843.

PRICE TWO SHILLINGS.

Any written corrective suggestions addressed to "A Phrenologist," and forwarded, post paid, to the Publisher, will be gratefully received, and dispassionately perpended.

TO

STANISLAUS WORCELL,

A POLISH EXILE.

The following Appeal on behalf of misunderstood, oppressed, and prostrated humanity, having received your sanction and approval, is, without any communication with you upon the subject of this Dedication, inscribed to you, as a heartfelt tribute of attachment, and as a slight proof of the unfeigned admiration with which your highly gifted and splendid intellect, and the still more noble qualities of your heart, are esteemed by

Your devoted and affectionate Friend,

THE AUTHOR.

London, March, 1843.

NOTICE TO THE READER.

Since the following Letter (which has never been acknowledged) was left at Lord Brougham's residence in Grafton-street, on the 8th instant, the Author has perused (as well as his Lordship ?) the recently published and improved *second* edition of Mr. Sampson's *invaluable* work on "Criminal Jurisprudence," and Mr. Winslow's *highly popular* "Plea of Insanity in Criminal Cases"—has re-examined his MS., and also submitted it for review to a few gifted friends, both *medical* and non-medical—and the result has been, that he has been induced to make *only a few trifling emendations.*

The Notes and Appendix have not passed through the same ordeal, *nor even been laid before the friend to whom the following Letter is dedicated,* because, whether they are read or not is immaterial, as they are merely subjoined to enable the reader to take a rapid but comprehensive view of the whole subject —to illustrate and confirm the positions advanced in the Author's communication to Lord Brougham, and also to make a proleptical reply, the only one he will ever make, to those "gentlemen of the press" who, even to preserve the appearance of a hollow and heartless consistency, must, unless they "turn from the evil of their ways," and become the converts of an hour, endeavour to overwhelm the Author with a torrent of unprincipled invective. This they are at liberty to do, as he is perfectly callous to all such rabid effusions, *the mere products of an abused and merely animalised intellect.*

March, 1843.

ON THE

AMENDMENT OF THE LAW OF LUNACY.

"Quæ lædunt oculos festinas demere; *si quid*
Est animus, differs curandi tempus in annum."—Hor.

"Pro superi! quantum mortalia pectora cæcæ
Noctis habent!"—Ovid.

My Lord,—

If I were solely to consider the contrast which our respective situations in life affords—your exalted position* and the very humble and very obscure one which I occupy in Her Majesty's service, I should be overwhelmed with confusion at the idea of addressing your Lordship upon the subject of *insanity;* but, when I reflect that the talents of the greatest of men are bestowed upon them with the design of securing to them, when rightly directed, their own happiness, and also of enabling them to promote the happiness of their less gifted fellow creatures, I confess my spirits revive, and I am not without hope your Lordship, however lame and defective may be my present attempt, will forgive me for intruding my thoughts upon you in the cause of prostrated humanity, and that, too, without your mistaking this procedure to be the result of impertinence, instead of, as it is, the consequence of a long and deliberate conviction.

It is now nearly thirteen years ago since I ventured to forward to your Lordship, from Portsmouth, a pamphlet entitled† "The Anatomy of Prejudice," in which some allusions are made to insanity, and to which a *subsequently* rather varied intercourse with some of the ablest medical men who have paid great attention to insanity, not merely in this country but on the Continent, as well as in the United States, has induced me to attach still greater importance; indeed, so much so, that I cannot but feel, in common with the enlightened and humane individuals above referred to, that the present state of the Law of Lunacy is a disgrace to the age—flagrantly in violation of *all* sound and enlightened medical experience, and pre-eminently demanding *all* the energies of even your master mind; and permit me, my Lord, to add, whatever may have been your glorious exertions to

* *Note by Printer's Devil.*—One of his Lordship's predecessors on the Woolsack—"the greatest but meanest of mankind"—Lord Bacon, has long since taught the *uninitiated* that "the road to honour is by a crooked path." Query—Is it not too often a very dirty one? Miror, sed non invideo!

† Johnson and Jacob, Winchester.

reform the law (and they have been stupendous and extraordinarily successful), the crying evil I am now adverting to, if possible, more imperiously demands them, and may they even be herein still more transcendently triumphant!

I am not prepared to *assert positively* that insanity is most decidedly increasing in this country, because, so far as my knowledge of its statistics extends, this has not been absolutely demonstrated; still, I incline to that opinion; and, if I mistake not, that is the opinion of those medical men who are most conversant with the subject. When I say that it is supposed to be on the increase, I mean in a greater *relative* proportion than the progressive augmentation of the entire population. Do I exaggerate, my Lord, when I maintain there may be upwards of 30,000 lunatics in the United Kingdom, making due allowance for the large number which is not placed either in the various public or private asylums pervading the land?*

If this supposition, my Lord, be not very wide of the truth—and I strongly suspect it is not—can your master mind be devoted to a nobler object? To mitigate the sufferings of those who are incapable of "providing for the day that is passing over them,"—to elevate prostrate humanity—and to restore to their bereaved families and friends the hopeless objects of their heart-rending anxiety: in a word, my Lord, to restore to our common country a useful and resuscitated citizen in place of, *at least*, a useless, if not a dangerous one.

Let it never be forgotten, to use the language of Dr. Conolly ("Indications of Insanity," p. 17), that "for a hopeless lunatic, for a raving madman, for a melancholy wretch who seems neither to see nor to hear, or for an utter idiot, a lunatic asylum is a place which affords all the comforts of which such unfortunate persons are capable. *This is a far different place to two-thirds of those who are confined there.* The crowd of most of our asylums is made up of *odd*, but *harmless* individuals, *not much more absurd than numbers who are at large.*"

To be convinced that this assertion of Dr. Conolly is well founded, it is only necessary to peruse the Reports of the Visiting Justices and of the Medical Superintendents of Hanwell, Forston near Dorchester, Glasgow, and other pauper lunatic asylums, where the patients are *productively* and *profitably* employed, either at their respective handicrafts and callings, or occupied with domestic, agricultural, horticultural, and other pursuits, by which procedure† their delusions are mitigated

* *Insanity.*—It appears that, within the last twenty years, the cases of the above dreadful malady have more than tripled. The total number of lunaties and idiots in England is as follows:—Lunaties, 6,806; idiots, 5,741; together, 12,517; but, allowing for defective returns, the number may be taken at 14,000—an average of one to every thousand of the population. In Wales, lunatics, 133; idiots, 763; total, 896; and adding for parishes that have made no returns, they may be set down at a thousand, a proportion of one to eight hundred. Scotland has 3,653 insane persons, or one to about seven hundred. In Ireland the number of lunaties and idiots exceed 8,000.—Prichard, p. 333, &c.; Browne, p. 51, &c.

† M. Mare has thus distinguished hallucinations and illusions:—

"*Hallucinations* are those sensations which are supposed by the patient to be produced by external impressions, although no material object acts upon

and restrained, their health gradually restored, and their daily serenity and nightly repose secured; but, my Lord, if the insane and vulgar idea of the character of lunatics were well founded, could such a procedure be relied upon? Could all kinds of coercion and restraint be almost entirely repudiated, and little else but an enlightened benevolence—moral treatment—be safely and successfully adopted? And why?—because *medicine is well nigh useless*, and the employment of violence truly execrable. (Vide Dr. Davis's Pinel.)

How has this truly philosophic and Christian revolution in the mode of treatment originated? To the immortal Pinel the world is *mainly* indebted for it, though he acknowledges he derived the originary idea from Spain; but, *above and before all*, we are indebted to the discoveries of Gall and Spurzheim for a philosophic insight into the nature of insanity, in all its innumerable varieties. They demonstrated that insanity was a disease of the brain; they ascertained, by physiological investigation and indefatigable observation, *not by idle metaphysical abstraction*, not merely that the brain was the organ of the mind, but also its various distinct functions, and consequently the integral diversified faculties constituting the mind. Whatever may have been the *groundless* opinion a few years ago, my Lord, as to their merits and the paramount importance of the discoveries of those illustrious men, very few individuals of any reputation in the medical profession, *who have studied their writings*, *now* question the soundness of their principles, the logical truthfulness of their inductions, or the unimpeachable accuracy of their facts. Lest I might exhaust your Lordship's patience, I will not harp further upon this point; but beg, in corroboration of my opinion, to respectfully refer you to Mr. G. Combe's Testimonials, and to the ablest and most recent writers upon physiology and anatomy, who admit all their *essential* principles and facts, particularly to Mr. Solly's work on the Brain, who is deservedly considered one of the highest authorities in the United Kingdom upon cerebral anatomy.

But methinks I hear your Lordship exclaim, "What has all this to do with my contemplated bill relative to insanity?" Much—very much, my Lord. Dr. Haslam (in his "Observations on Insanity, 2nd edition, p. 237) very judiciously and philosophically observes, "that whenever the functions of the brain shall be fully understood, and the uses of its different parts ascertained, we may *then* be enabled to judge how far disease, attacking any of those parts, may increase, diminish, or otherwise alter its functions." But to avail myself of the language of the eloquent Dr. Conolly ("Indications of Insanity," p. 14), "Medical authorities agree in ascribing mental disorders to corporeal disease, not to any specific corporeal disease, but to *any disease capable of disturbing the functions or impairing the structure of*

the senses. *Illusions*, on the other hand, are the results of a material action on the perceptive faculty, although the object is falsely perceived. When a man fancies he hears voices speaking to him while there is the most profound silence, he labours under a hallucination. When another imagines that his ordinary food has an earthy, or metallic taste—this is an illusion."—No. XIX. Br. and For. Med. Rev., p. 166.

the brain. . . . . We observe, also, with respect to cases of insanity, an indifference to medical treatment, which is not observed in other cases of corporeal disease; and, admitting the want of full and strict analogy between the two cases" (insanity and cases of strictly corporeal disease), " the reasonable conclusion is, that *the disorder is imperfectly understood and insufficiently attended to.*" And at page 1, he very justly remarks, " that an inquiry of a different nature" (the recognition of insanity), " and opposed, in this country, by peculiar obstacles, must be incomplete, I freely admit. The interests of the public greatly require that medical men, to whom alone the insane can ever properly be entrusted, should have opportunities of studying the forms of insanity, and of preparing themselves for its treatment, in the same manner in which they prepare themselves for the treatment of other disorders. *They have at present no such opportunities. During the term allotted to medical study, the student never sees a case of insanity, except by some rare accident.* Whilst every hospital is open, every lunatic asylum is closed to him; * *he can study all diseases but those affecting the understanding*—of all diseases the most calamitous. The first occurrence, consequently, of a case of insanity, in his own practice, alarms him; *he is unable to make those distinctions which the rights and happiness of individuals and of families require" (particularly in the cases of those who are of noble or of gentle blood);* " and has recourse to indiscriminate, and, *generally, to violent or unnecessary means;* or gets rid of his anxiety and his patient together, by signing a certificate, which commits the unfortunate person to a madhouse."

Such, my Lord, is the disgraceful state of ignorance in which nearly the whole of the medical profession is steeped. Is not such a state of things a most grievous national calamity? especially when it results as an almost inevitable consequence, that our legislators, and both the learned professions, *must* rely upon this " broken reed" in their attempts (ludicrous, if not heart-rending) to investigate and account for the morbid cerebral phenomena—the pathology of insanity.

Surely there is no inevitable and invincible necessity for the continuance of this distressful state of things? The physiology of the brain—phrenology†—has been, to a most wonderful extent, discovered

* St. Luke's and Bethelem are an exception.

† " The reader will have little difficulty in perceiving, from what has been previously advanced in this work, that no certain or well defined principles have as yet been laid down by men who rank high amongst the most distinguished writers on English Jurisprudence, for our guidance in cases of criminal insanity. When such questions have come before the judicial tribunals of the country, the presiding judge, in his charge to the jury, has invariably referred to the *dicta* of preceding administrators of the law, and has quoted their definition, or description of insanity, as an unerring test of the presence of mental derangement in any case in which the malady is alleged to exist.

" How absurd, upon reflection, must such a course of procedure be. *Has not our knowledge of the disorders of the mind advanced during the last fifty years? Do we not know more of insanity than our professional brethren did who lived in the days of Coke, Mansfield, and Erskine?* If so, how ridiculous it is to cite their opinions, or to *bind us down to the authority of men, whose information on this subject must, of necessity, have been extremely limited and circumscribed.* The judges of the land appear to have no settled or clear views on the subject of insanity. *This may, in a great measure, result from*

and elucidated by the researches of Gall and Spurzheim, and its pathology and its therapeutical treatment unfolded in the most masterly manner in the writings of Spurzheim, Conolly, A. Combe, Browne, Sir W. Ellis, Broussais, and other celebrated French

their attempting to define the disease. Insanity does not admit of being defined. It is not in the power of any human being to embody, within the limits of a definition, all the peculiar and characteristic symptoms of mental derangement. The malady assumes so many forms, and exhibits itself in such Protean shapes, that it is out of our power to give anything bearing the semblance of a correct or *safe* definition of the disorder—such a definition that could be referred to as a standard in doubtful cases of deranged mind. If it be difficult to embrace within the bounds of one sentence anything like a true description of the symptoms of general mental aberration, *a fortiori*, how abortive must be the attempt to lay down any rule by which we are to test, in any particular case, the presence or absence of moral responsibility. After consideration of the cases which have been brought forward in this work, it must be evident that *the capability of "distinguishing between right and wrong," is not an unerring test to which to appeal.* A person may be perfectly competent to draw a correct distinction between right and wrong, and yet labour under a form of insanity which ought unquestionably to protect him from legal or moral responsibility. I allude to cases of insanity where the patient is driven, by an irresistible impulse, to destroy, after struggling for some time against the morbid desire, being, at the same time, perfectly conscious that he is impelled to do what is wrong both in the sight of God and man. Were the legal test to be rigidly applied in this case, the unfortunate maniac would have no chance of escaping. *To my conception, the law draws a most absurd distinction between civil and criminal insanity.* A person who exhibits the slightest aberration of mind is considered to be incapable of discharging his duties as a citizen, is not allowed to have the management of his affairs, cannot make a will, and is safely shut up in a madhouse; but should the same individual, pronounced by the Commissioners of Lunacy to be of unsound mind, commit, in a moment of frenzy, a criminal act, he is considered amenable to the law. He may fancy himself the King of England, a tub of butter, or a pane of glass, yet be viewed responsible for his conduct; and, if he be guilty of a capital crime whilst labouring under any of these delusions, he is liable to undergo the extreme penalty of the law, provided no connexion can be established between the act and his mental hallucination. The law on this subject is clear. Collinson (Law of Lunacy, vol. i., p. 474,) says—'Neither is any person against whom a commission of lunacy may be sustained, of a description to commit an offence with impunity. To excuse a man in the commission of a crime, he must, at the period when he committed the offence, have been wholly incapable of distinguishing between good and evil, or of comprehending the nature of what he is doing; a state of mind distinct from that which is merely unequal to the pursuit of a regular line of conduct, or the management of private affairs.' IF SUCH BE THE LAW, DOES IT NOT NEED CONSIDERABLE ALTERATION?"—Vide Winslow's Plea of Insanity in Criminal Cases, pp. 73—5. Renshaw. London, 1843.

[Though agreeing with Mr. Winslow in many respects, I beg most emphatically to differ in opinion with that gentleman as to Lord Ferrers's case. Let any unprejudiced man compare that gentleman's and Dr. A. Combe's consistent and philosophic views upon *all* the facts of that case, and, I submit, the conclusion is irresistible, that Lord Ferrers was an homicidal, or moral maniac; however, upon the whole, I have great pleasure, notwithstanding a few rather palpable, but only *occasional* inconsistencies therein, in recommending Mr. Winslow's well-timed and useful compilation to my readers, especially if they be too *bigoted* or too indolent to go to the fountain head and consult those *original* phrenological records from which Mr. W. has so abundantly (I regret he did not publicly and specifically acknowledge his overwhelming obligations), drawn the far greater portion of his facts, of his illustrations, and nearly all his pathological and medico-legal views of insanity.—Fiat justitia, ruat cœlum.]

medical phrenologists and non-phrenologists,—to say nothing of the writings of our Transatlantic brethren, particularly Dr. J. Ray's incomparable work on the Medical Jurisprudence of the Subject, and by Mr. Sampson *(of the Secretary's Office in the Bank of England)* in his Treatise on Criminal Jurisprudence.

I cannot conceal from myself, my Lord, that there are great difficulties connected with the attempt at legislating upon insanity, but an English board of "Experts,"* I trust, would not, however, find them insuperable; because, as is remarked by the, perhaps, ablest physician and most gifted medical writer now living, Dr. Andrew Combe, who is at present at Madeira for the benefit of his health (on "Mental Derangement," p. 216), "numerous definitions of insanity have been given, but never one which has been considered as satisfactory either by the profession or by philosophers. Dr. Spurzheim comes nearer to the mark than most of his predecessors, when he announces his expectation that the day will come" (has it not, my Lord, already arrived?) 'when derangement of the intellect and *feelings*, and cerebral affections, will be placed in the same order of diseases, and *we shall speak only of affections of the brain*, as we do already in regard to the disordered functions of the five senses, which we always refer to their respective organs.' ("On Insanity," p. 40.) But, in his *professed* definition (*Ibid.* p. 71—1817), even he is far from being successful, as it rather repeats a truism than conveys any precise information. It

* "The time, I hope, is not very far distant, when there will be instituted, for the investigation of cases in which it is important to establish the existence or non-existence of aberration of mind, a separate jurisdiction presided over by persons whose attention has been specially directed to the study of mental aberration."—Winslow's Plea, Pref., p. 6.

[Perhaps a better plan than either the one suggested in the text, or that proposed by Mr. Winslow, would be to establish a National Board of Experts, with ramifications throughout the country, consisting of the different professors of Medical Jurisprudence in the various Medical Schools, who should receive a regular salary, and be appointed by the Home Secretary after the several candidates have been recommended by a *majority* of the judges of the land, assisted by the presidents of the different medical metropolitan societies. These Experts should be invariably summoned as witnesses by the coroners. In order that such National Board of Experts should really represent and reflect the spirit of the age, the government should *forthwith* offer a handsome premium for the best essay upon the subject, in a generous spirit of humanity, without meanly imposing any petty chandler-shop restrictions. If the British dominions cannot furnish an instance of the highest talent, combined with the most exalted humanity—if, as a nation, we are afraid of competition with the whole world—then indeed we have reason to blush for our country and its institutions.

This procedure ought to be considered as a sine qua non—an indispensable preliminary—*before* any further legislation is attempted. Is the medical police of Great Britain to continue for ever a century behind that of France and Germany? Is Parliament for ever to legislate in the most pitiable state of ignorance of insanity? Will our legislators never "unlearn the errors of the crowd, and the *pretended* wisdom of the schools?" But, what is the use of suggesting any thing in the name of Truth, of Justice, or of Humanity, when, to use the sarcastically significative expression, *because true*, of my Lord Stanley, "*thimble-rigging*" is the order of the day! Reader, his lordship knows something of men of *all parties*. He is one of the initiated—is proud of his position, and of the *practical* knowledge by which he acquired it.

is important to remark this fact, because *definitions are constantly sought after, in civil and in criminal cases, by lawyers and by judges, and the whole value of a witness's evidence is often made to turn on its relation to a standard,* WHICH IS IN ITSELF THE MEREST ASSUMPTION, seeing that *it is beyond the power of man to invent any brief description which shall comprehend the various cerebral affections whence insanity originates.*" "Instead, therefore, of following the common practice," continues this truly good and great man (*Ibid.* p. 218), "I (Dr. A. Combe) shall only state, generally, that the existence of insanity implies morbid action in one, in several, or in the whole of the cerebral organs, and, as its necessary consequence, functional derangement in one, in several, or in the whole of the mental faculties which these organs subserve," &c.

The question then arises, my Lord,—insanity being indefinable, how is it to be detected? "Eccentricity involves, all other things being equal, a greater than usual susceptibility of mental derangement; but still it is not mere strangeness of conduct or singularity of mind which constitutes its presence. *It is the prolonged departure, without adequate external cause, from the state of feeling and modes of thinking usual to the individual when in health that is the true feature of disorder of mind;* and the degree at which this disorder ought to be held as constituting *insanity,* is a question of another kind, on which we can scarcely hope for unanimity of sentiment and opinion. Let the disorder, however, be ascertained to be morbid in its nature, and the chief point is secured—viz., a firm basis for an accurate diagnosis; because it is impossible that such derangement can occur, unless in consequence of, or in connexion with, a morbid condition of the organ of mind; and thus the abstract mental states, which are justly held to indicate lunacy in one, may in another, speaking relatively to health, be the strongest proofs of perfect soundness of mind." (*Ibid.* p. 219). "It is therefore, I (Dr. A. Combe) repeat, not the abstract act or *feeling* which constitutes a *symptom,* it is *the departure from the natural and healthy character, temper, and habit that gives it this meaning*; and *in judging of a man's sanity, it is consequently as essential to know what his habitual manifestations were, as what his present symptoms are*" (*Ibid.* p. 220), whatever Dr. Monroe may have deposed to the contrary at M'Naughtou's trial.*

Permit me, my Lord, in consequence of the disgracefully erroneous, but universally prevalent hallucination that insanity *always* implies intellectual, as contradistinguished from the disturbance of the moral

* "A commission was appointed to visit that prison (the Bicêtre) for the purpose of liberating those persons who were confined there as being of unsound mind, but who were not labouring under that calamity. M. Pinel states, that he examined one particular patient *repeatedly,* upon many successive days, and though he was a person experienced in those inquiries, and a man of considerable learning and sagacity, all his endeavours to prove the man insane were frustrated and foiled. The result was, he ordered a certificate to be prepared for his liberation. It was necessary, before the man was liberated, that he should himself sign the certificate. It was placed before him, and he signed "Jesus Christ"—of course the certificate decided the question, and the man was not liberated."—Lord Lyndhurst's Speech on the Plea of Insanity in Criminal Cases. Vide *Times* newspaper, March 14, 1843.

or animal feelings, to invite your attention to the following passage in refutation of it. This I am constrained to do, because an overwhelming majority of the press and the public most decidedly appear at the present moment to stand aghast at the verdict pronounced by the jury in M'Naughton's case, which case was most abundantly proved to be one of "homicidal insanity,"—which is *occasionally* characterised by what Pinel calls "folie raisonnante,—*i. e.*, unimpaired intellect, or nearly so, with such an amount of morbid feeling as *irresistibly* to transport its victim to the *blind* and abnormal gratification of it, however destructive its tendency may be, even so as to convert the otherwise harmless individual into, to use Dr. A. Combe's felicitous expression, a very "genius of mischief."

Again, "The *passions* and *feelings* of the human mind, or the *affective* and *moral* powers, are *the most prolific sources of mental derangement*, because their organs are the largest—*they are the most energetic of the faculties*—and they meet with daily and hourly stimuli in the ordinary affairs of life; but, *although more rare*, cerebral disease and mental derangement, from inordinate excitement in the *intellectual* faculties and organs, occur frequently enough to be familiar to every observer." (Dr. A. Combe on "Mental Derangement," p. 200.) Once more (pp. 212, 213), "In going over the numerous examples in the 'Traité de la Manie,' we are struck by the number of mental *emotions* which have provoked delirium or madness. The observations which it has been in my power to collect, and those, still more numerous, which I have been able to consult, have convinced me, that out of *one hundred* lunatics at least *ninety-five* have become so in consequence of *moral affections* or *commotions*. It has become almost a popular truth in the hospital (La Salpètrière), that no one loses his senses except by revolutions of mind. The first question which Pinel puts to a new *(mad)* patient, *who still retains his reason*, is, whether he has been exposed to any grief, anxiety, or *other moral affection?* And *rarely is the answer in the negative.* (Georget, sur la Folie, p. 161.) With this, and all the other evidence which I have adduced before us, what are we to think when we find an author of some experience, like Dr. Knight, affirming that he could trace the operation of moral causes in *one* case only of *seven hundred?* Either the laws which regulate the health and functions of the brain are totally different from those which preside over all other animal organs, and the concurrent testimony of our ablest and most experienced practitioners has been based upon a delusion savouring of insanity, or Dr. Knight has been labouring under some idiosyncrasy" (and, my Lord, lunatics are as remarkable for their idiosyncrasies of constitution and of character as the sane) "of understanding in regard to the meaning of the word *moral*. Which of them is the true explanation it is not worth while stopping to inquire. *The truth will speak for itself to the minds of those who seek it with candour; and, after what has been said, it may safely be left to support itself.*" (See also, inter alia, "The Phrenological Journal," Sampson on "Criminal Jurisprudence," Dr. Prichard on "Insanity," &c.)

This last night's lucubration, my Lord, has insensibly grown under

my hands. The subject is of such paramount importance, and is so deservedly attracting the greatest attention on the continent of Europe, that, if I am not misinformed, the Austrian government *recently* expressly delegated a physician (Dr. Kazrkowski) to traverse the British Empire and the whole of the European continent, for the purpose of gaining an insight into the best mode of treating lunatics, and of reporting upon it; two years ago the amiable and accomplished Dr. Otto was here in England, from Copenhagen, on a similar mission; and I need not inform your Lordship, that in France and in the United States the subject of insanity is an all-engrossing one. Under these circumstances, my Lord, I am emboldened to apostrophize you (even whilst I entreat your forgiveness for my presumption in inflicting this long but very hurried letter upon you) in the heart-thrilling language of "the honor of human nature—the glory of his country," Milton—

"*Let not England forget her precedence of teaching nations how to live.*"

I have the honor to be, my Lord,

Your Lordship's most obedient and very humble servant,

A PHRENOLOGIST.

APPENDIX.

"Truth, whose first steps should be always vigorous and alone, is often obliged to lean for support and progress on the arm of Time; who then only, when supporting her, seems to have laid aside his wings."—Dr. Rush's Philosophy of the Voice, Introd. p. 30, edit. 1833.

"*Genuine* professional feelings require a man to tell to his brethren *all* he knows which can be to their advantage; not to stop short exactly at that point at which his pecuniary profit and their information disagree."—British and Foreign Medical Review, No. XXIII., p. 178.

ANTIPHRENOLOGICAL OR OBSOLESCENT VIEWS OF INSANITY.

"THE CASE OF M'NAUGHTON.

It is a matter of consolation to most persons, that they are not bound to believe all they hear, or all that is asserted in a law court. The actions of the auditors, and of the general community, must, of necessity, be directed, restrained, and governed by the sayings and doings of judges and juries, but, *fortunately for the great body of the public, the sayings and doings of such functionaries can neither blind their judgment nor bind their freedom of thought, and when things take place in a court of law, or any other place in which justice is said to be administered, repulsive to common sense, and dangerous to public or private security,—it is not because such places are dignified by the supposed attributes of learning and discretion, or elevated by the possession of power and authority over life and limb, and purse and property, that men of reflection and foresight will succumb in the stagnation of acquiescence with absurdities and contradictions, or stultify themselves by a mental concurrence in what they think wrong.* It has long been remarked of the laws of England, which laws are said by one of the oracles of the law to be the "perfection of human wisdom," that they are gifted with a peculiar faculty of mutability, and a propensity for variation, which renders them exceedingly difficult to be understood, if not perfectly impossible to be comprehended; and the old saying that "what is law to-day will not be law to-morrow," has, perhaps, irreverently been made by those who have not been inoculated with the *virus* of law learning, or have not caught the contagion of the "courts" *au naturel.* Still the remark has been repeatedly made, and somehow or other the old saying has not lost its force or its frequency, and its aptness of application. Mankind, in spite of big looks, big books, and big wigs, have for a very considerable time been inclined to doubt the wisdom, much more the "perfection of wisdom," which is doled out to the public in law courts at an amazing expense of money, and a ruinous waste of time to the clients; and *to suspect that a good deal of the mystification by which the dispensation is surrounded is nothing more than solemn humbug and tedious twaddle.* Perhaps people are wrong in their surmises and notions on this subject,—*nevertheless, such surmises and notions have been, more especially of late years, almost universally prevalent; and from what has just been the result in the trial of the "insane" M'Naughton, it does not seem to us that they are likely very*

speedily to be removed or even qualified. Let us examine, as men of common sense, what came out on that trial, and endeavour, if we can, to arrive at the conclusion to which the jury, under the direction of the judge, arrived. It is a very convenient doctrine, and one which is insisted upon by everybody who is immediately interested in, or affected by its adoption, that the verdict of a jury must be intact; and that a jury, having pronounced a man or woman either innocent or guilty, or anything else, that verdict is conclusive, and that no more ought to be said about the matter. *Now this is a doctrine against which we must dissent toto cœlo, because, if it were adopted, it would confer on human judgment the attribute of infallibility, and open a door for the introduction of proceedings by which the lives and liberties of every man in this kingdom would be jeopardized, if not destroyed.* The expression of the public opinion, through the columns of the public press, is never more salutary in its effects *than when it impugns a verdict with which the public does not concur, and the more so when it explains the reasons of the non-concurrence.* It is by this salutary expression of dissent with what it considers wrong in such cases, that future juries are taught to be more guarded in their decisions; and it is by this wholesome discussion, of what every man of common sense and common honesty throughout the empire can comprehend just as clearly as the most learned judge upon the bench, that those learned judges themselves are restrained *from the commission of those unexplicable absurdities into which any gentleman, however "learned in the law" he may be, is sure to be betrayed when he loses sight of common sense, and begins to flounder in the rubbish and quicksands of unintelligible jargon and technicality.* Now, *in this case of M'Naughton, all that is worth being listened to in the voice of the public press, has been unequivocally unanimous in animadverting upon the result of the trial. All party feeling has been merged in deploring the verdict, and in deprecating the consequences that may arise from it;* and *this general concurrence of correct feeling and common honesty has been received by the universal public in a manner which cannot be mistaken, and which shows that however an assassin may be screened by a verdict from the consequences of a murder, he cannot be screened by any judge or jury in existence from universal execration;* and that, *however a legal definition may exonerate a miscreant from the punishment of his crime, it cannot exculpate him in the eyes of his fellow-creatures, or persuade them of his innocence;* and it moreover shows that *however successful a plea of insanity may be in a criminal court, there is yet indignation enough left in the community for the repudiation of the crime from the punishment of which he has escaped. Of the twenty millions of persons who compose the population of the British empire, we will ask who, beside the judge and jury who tried M'Naughton, and the witnesses who swore to what they considered the proofs of his insanity, consider him insane?* How many persons are of belief, besides those just mentioned, that he was not perfectly aware that he was, when he shot Mr. Drummond, committing a foul and detestable murder? *What avails the conglomerated hodge-podge of "Law and Physic," the "stir-about" of "law-learning" and "medical learning," with which the counsel and the medical witnesses dosed and drenched the jury? With us, and we assert with the immense majority of the public, it goes for nothing.* One little grain of common sense and common observation goes farther to show what was the real state of the case, and the real state of the assassin's mind, when he contemplated and when he perpetrated the murder of his victim, *than all the elaboration of the law, and all the botherations of Bedlam.* To our notions, the jury were bewildered, and though we impute no improper motives whatever to the learned and, as it has always been understood, very upright judge before whom M'Naughton was tried, yet *we cannot congratulate that learned personage upon any increase which his reputation will receive from the result of the trial. To us, and to hundreds of thousands of other people who have read the evidence, we will take the liberty of saying, with just as unbiassed and unprejudiced feelings as that learned judge himself, and, even from that learned judge's own observations on the trial, with just as much capacity of discerning, even legally, what constitutes a murder and what does not constitute it,—it certainly does appear that no man ever committed a more atrocious murder than M'Naughton did, and that no miscreant ever more richly deserved to expiate his crime on the gallows at Newgate.* We believe nobody will assert that the

learned judge who tried the case, however great his legal attainments, is superior in his knowledge of the law, or superior in his powers of discernment and deduction, to Sir Matthew Hale; we are quite sure that that learned judge himself would not thank even his warmest admirer for drawing a comparison between his character and that of the illustrious individual just named. Now, let us see what Sir Matthew Hale says of the plea of insanity in criminal cases, and we will take what he says from the speech of Sir William Follett, because that speech contains the very essence of the opinion of the great Chief Justice of former days, and because it is a definition in which all men of common sense will concur:—

"The result of the whole reasoning of this wise judge and great lawyer (Lord Hale), so far as it is immediately relative to the present purpose, stands thus:—*If there be a total permanent want of reason, it will acquit the prisoner; if there be a total temporary want of it when the offence was committed, it will acquit the prisoner;* but *if there be only a partial degree of insanity, mixed with a partial degree of reason, not a full and complete use of reason, but (as Lord Hale carefully and emphatically expresses himself) a competent use of it, sufficient to have restrained those passions which produced the crime; if there be thought and design—a faculty to distinguish the nature of actions—to discern the difference between moral good and evil—then, upon the fact of the offence proved, the judgment of the law must take place.*"

"Now, here is an intelligible, and, *as the public think, a correct view of the nature of the plea of insanity in criminal cases*, coming from the very highest authority in the law learning of England, and *an authority which at once reconciles law and common sense*—a reconciliation not always effected by modern *dicta—an authority consecrated by the acquiescence of two centuries*, and *though somewhat shaken by recent decisions, not likely soon to be forgotten or gainsayed.* We say that *if* this explanation of the law in cases of insanity be correct, *then* was M'Naughton most clearly guilty of the crime of murder, and most clearly deserving of the punishment awarded to murderers. *We contend that at the very utmost there was "only a partial degree of insanity" proved—that it was "mixed with a partial degree of reason"—and that that partial degree of reason was quite sufficient to have restrained the assassin from the commission of his crime. We contend that there was "thought and design—a faculty to distinguish the nature of actions—to discern the difference between moral good and evil;" and from a diligent examination of the evidence, we cannot but come to the conclusion that a murderer has been suffered to escape, and the hangman deprived of his rights!*

"But we are afraid the worst is yet to come. *Does not the escape of such a criminal hold out impunity to those who are inclined to commit similar crimes?* Can any public man walk the streets in security, if such result follow the murder of an innocent public functionary? Can Sir Robert Peel feel his life worth a week's purchase after this acquittal? And *is it not more than likely that a repetition of the atrocious attacks upon the life of the most august personage in the empire will be renewed?* Let anybody look at the police reports of the last week; they will see that the "monomania" of destruction has received an impulse from what has occurred, and whilst we acquit those who pronounced the acquittal of the assassin M'Naughten, from all evil intentions, we cannot but foresee the evil that will result, and *deprecate the responsibility which that verdict has incurred.*"—(From *Sunday Times*, March 12th, 1843.)

"PLEA OF INSANITY IN CRIMINAL CASES.

The LORD CHANCELLOR then rose and said,—My lords, I have felt anxious at the earliest possible day to call your lordships' attention to the subject of the notice I gave on a former occasion with reference to a late trial. The circumstances connected with that trial have created a deep sensation among your lordships, and also in the public mind:—and, my lords, I am not surprised at this. A gentleman in the vigour of life, of most amiable character (hear, hear), incapable of giving offence or doing an injury to any individual, was murdered in the streets of this metropolis in open day. The assassin was secured—was committed for trial: that trial has taken place, and he has escaped with impunity. Your lordships will not be surprised that this circumstance should have created a deep feeling in the public mind, and that many

persons should, on the first impression, be disposed to think that there is some great defect in the laws of the country with reference to this subject, and that there should be a full revision of those laws, in order that a repetition of such outrages may be prevented. My lords, I felt it my duty, in consequence of some suggestions of your lordships, to consider, in consultation with others, this interesting and important subject, with a view of ascertaining not only what the law is with reference to it, but for the purpose of ascertaining, if there should turn out to be a defect, what practical remedies should be applied, and what the nature of those remedies should be. *You must be aware, my lords, that this is a most difficult and delicate subject, because all persons who have directed their attention to these inquiries—all persons who are best informed upon them, concur in stating that the subject of insanity is but imperfectly understood.* I am not now speaking of general and complete mental alienation, but I am speaking of that description of insanity which consists in a delusion directed to one or more subjects, or one or more persons; and those who are acquainted with the subject know how difficult it is to decide to what extent the moral senses and the moral feelings that guide men's actions are influenced by delusions of this description. We all know that persons who labour under a mental delusion with respect to one or more subjects are entirely—or apparently entirely—rational with respect to others. They are frequently very intelligent, frequently very acute; it is often extremely difficult to discover the existence of this concealed malady, and persons who labour under it are uncommonly astute in defeating all endeavours to detect its existence. My lords, we almost all of us know and recollect the statement made by Lord Erskine in his eloquent defence of Hatfield with respect to the acuteness with which persons who labour under infirmities of this description defeat the skill, sagacity, and intellect of the most experienced persons. He tells us of an instance of a prosecution having been directed by a person who had been confined in a lunatic asylum against his brother and the keeper of that asylum for false imprisonment and duress. Lord Erskine was counsel for the defence. He says he was informed in his brief and instructions that the man was undoubtedly insane, but the particular infirmity of his mind was not disclosed to him. The prosecutor was himself a witness in support of the indictment; he was put into the box and examined, and when Lord Erskine came to cross-examine him he found his evidence clear, distinct, collected, and rational. He tried to discover some lurking alienation of mind. During a cross-examination, conducted with all the skill and sagacity of that eminent advocate, for a period, as he says, of nearly an hour, all his endeavours were foiled. The answers were perfectly rational—there was not the slightest appearance of any mental alienation. A gentleman came into court who had been accidentally detained, and whispered in Lord Erskine's ear that the witness thought he was the Saviour of mankind. The moment Lord Erskine had that hint, he made a low bow to the witness, addressed him in terms of great reverence, respectfully begged to apologize for the unceremonious manner in which he had treated a person of his sacred character, and called him by the term of Christ. The man immediately said, "Thou hast spoken truly: I am the Christ." (Hear, hear.) A similar circumstance is mentioned in the work of M. Pinel, with respect to a person confined in the Bicêtre. *A commission was appointed to visit that prison for the purpose of liberating those persons who were confined there as being of unsound mind, but who were not labouring under that calamity. M. Pinel states, that he examined one particular patient repeatedly upon many successive days, and, though he was a person experienced in those inquiries and a man of considerable learning and sagacity, all his endeavours to prove the man insane were frustrated and foiled. The result was, he ordered a certificate to be prepared for his liberation. It was necessary, before the man was liberated, that he should himself sign the certificate. It was placed before him, and he signed "Jesus Christ." Of course the certificate decided the question, and the man was not liberated.* My lords, I could mention a great variety of instances to show you the different shapes and forms which insanity of this description takes, collected from medical writers and jurists of this country, France, and Germany, where the subject has been much and deeply investigated. The result would be, that your lordships would be satisfied that *any attempt at a definition or description of this par-*

ticular disease would be altogether futile; and the only course we can pursue is to lay down some general comprehensive rule, and to leave those who have to administer the laws of the country to apply that rule to the different cases according to their discretion. Now, my lords, the question for our consideration is, what is actually the law of the country with respect to crimes committed by persons labouring under infirmities and diseases of this description? I apprehend, when you come to consider it, there is no doubt with respect to the law (hear, hear)—that it is clear, that it is distinct, that it is defined; and I think the result will be upon your mind, that it will be impossible beneficially to alter that law, or render it better in that respect, than the law as at present shaped actually exists. My lords, for this purpose I wish to be as clear and as perspicuous as possible. *It is a subject of great importance; it is one in which the public take a deep interest, and every thing, therefore, connected with it ought to be laid before the public through your lordships with the utmost possible precaution.* I think it is not necessary, my lords, to quote any text-writers upon this subject. I shall go to the fountain-head, and state to your lordships what learned judges have said in the course of their administration of justice applicable to this subject, and the law they have laid down for the guidance of those who have to decide on the criminality or innocence of persons charged before them. The first authority to which I shall beg leave to refer is the authority of a most learned and most accurate judge. I speak in the presence of noble and learned friends who recollect that learned judge, and who will concur with me in saying that he never was exceeded by any person who has had to administer justice in this country in the accurate and sound views which he took of the law,—I mean Mr. Justice Le Blanc. I shall state to your lordships how the law was laid down by that learned judge, in a case that was tried before him at the Old Bailey in the year 1812, a few months after the trial of Bellingham. The circumstances of that case, as far as are necessary for me to introduce the judgment, were shortly these:—*The prisoner had entertained a great antipathy for a person named Burrowes. There was no foundation for it—in fact he had never given him the slightest cause for offence.* With great deliberation he loaded a blunderbuss and shot him. Fortunately, however, the man was not killed. He was tried under the act for shooting—a capital offence. The defence set up was insanity; he had epileptic fits, which not infrequently do produce that infirmity of mind. He had, about a month before, had a commission of lunacy issued against him, a jury was impanelled, and found a verdict of insanity. Mr. Warburton, the keeper of a lunatic asylum, a man of great experience in these matters, gave judgment that in his opinion he was insane, and said *that insanity of that description often led to creating and harbouring the strongest antipathies without any cause against particular individuals.* This was the substance of the case presented to the jury. The learned judge, with respect to the main point, summed up in these words:—It is for you to determine *whether the prisoner, when he committed the offence with which he stands charged, was or was not incapable of distinguishing right from wrong—whether he was under the influence of an illusion with respect to the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit, since in that case he would not be legally responsible for his conduct.* On the other hand, provided you shall be of opinion *that when he committed the offence he was capable of distinguishing right from wrong, and not under the influence of such an illusion as disabled him from distinguishing that he was doing a wrong act, he would be answerable to the justice of his country and guilty in the eye of the law.*" The prisoner was afterwards found guilty, and I believe executed. *That, my lords, is the law of the land, so far as relates to men labouring under some delusion;* and, while it is upon them, acting under its influence,—*if it be so powerful as to render them incapable of distinguishing right from wrong, or knowing that they are doing wrong in murdering their fellow-creatures,*—in such cases they cannot be considered responsible in law for their actions. *All the decisions show this to be the law.* The next case which I shall mention is that of Bellingham, who was tried before Lord Chief Justice (Sir James) Mansfield. I thought it important in this case, in consequence of different observations that have been made upon it, to request the

Solicitor of the Treasury to search for any shorthand writer's notes of the proceedings; and I have received the following as the substance of the summing up, as far as it is connected with this subject. The facts must be fresh in your lordships' recollection, notwithstanding the lapse of time. The Lord Chief Justice, after some remarks on the cases of men who are utterly and totally deprived of reason, said, "There are other species of insanity, where people take particular fancies into their heads, who are perfectly sane and sound upon all other topics; but *that is not a species of insanity that can excuse any person who has committed a crime, unless it so affects his mind at the particular period when he commits a crime as to disable him from distinguishing between right and wrong, or the just consequences of his actions;*" and subsequently he put it to the jury thus—"The question is, *whether you are satisfied that the prisoner had a sufficient degree of capacity to distinguish between good and evil at the time when he was committing this act?* In that case you will find him guilty." So that, although the expressions in some instances vary, the substance of the two judgments is, I apprehend, exactly the same,—that *if the party at the time when he committed a crime was in such a state of mind as not to know he was doing a wrongful act*, he is not to be held legally responsible. My lords, there was an earlier case to which I will call your attention; that of Hatfield. Mr. Erskine, in his eloquent and powerful defence on that occasion, stated what he conceived the law to be in cases of this description,—"Where a man is labouring under a delusion, if the jury are satisfied that this existed at the time of the offence, and that *the act done was committed with that delusion, and done under its influence, he will not be considered as guilty in the eye of the law.*" That was, in eloquent expressions, alleged to be the law in cases of this sort; and Lord Kenyon, who, with the rest of the judges of the Queen's Bench (it being a trial at bar) presided, interrupted the defence, and said, "Mr. Attorney-General, can you call any witnesses to controvert these facts? With regard to the law, as it has been laid down, there can be no doubt whatever. If a man be in a deranged state of mind at the time of committing an act, he is not criminally answerable; *the material part of the case is whether, at the very time, his mind was sane.*" And, after other observations, his lordship said, "His insanity must be made out to the satisfaction of a moral man meeting the case with fortitude of mind, and knowing the anxious duty he has to discharge; yet, *if the scales hang tremulously, throw in a certain proportion of mercy in favour of the prisoner.*" In that case, then, my lords, which preceded the others, Lord Kenyon and the rest of the judges of the Queen's Bench agreed with the law as laid down by Mr. Erskine—that if a man committing a crime be labouring under such a delusion at the time as not to know right from wrong, he cannot be made the subject of a criminal proceeding. My lords, *no departure has been made from that law, as thus laid down, not by single judges alone, but in conjunction with others of their brethren, who must be taken to have concurred with them. No alteration has taken place in that law, or in the way in which the judges administered it who presided at the late trials.* In Oxford's case, Lord Chief Justice Denman laid down precisely the same law; and in order that there might be no mistake, it being a subject of such deep importance and interest, he consulted with two other learned judges associated with him (Mr. Justice Patteson and Mr. Baron Alderson), who concurred in a written note of the law upon the subject, which was read to the jury by the Lord Chief Justice. My lords, *I take the law thereto be distinctly settled;* and, if it be so, the next question for your consideration is, whether there is any reason, or even any possibility of altering it? Can you say, that if a man at the time when he commits a crime be under the influence of a delusion and insanity, so as not to know right from wrong, or the character of the act he is committing, is it possible, my lords, that you should, by any legislative provision, declare that such a man ought to be the subject of punishment, and lose his life in cases in which the capital penalty applies! My lords, *it is impossible.* (Hear, hear.) You might pass such a law, for your lordships have the power to do it; but *when you come for the first time to put that law into execution the common sense and common feeling of men would revolt against it* (hear, hear), *and you would be compelled to retrace your steps, and to repeal the law, which in a moment of feeling you had passed, under the influence of recent powerful*

impressions and contrary to what you would have deemed wise under the sway of sober and steady reason. (Hear, hear.) *Lord Coke says, that to execute an insane person is murder, a course contrary to all law and all reason, and alien from all the principles of justice.* (Hear.) My lords, if you entertain any doubts upon the law, you can summon the judges of the land and hear their opinion upon it (as it is a subject of great importance), and thus have the law laid down under their united authority, to operate in all time, for the guidance of courts of justice, and to direct, with more force than is attained by the influence of a single judge, the verdicts of juries. It is for your lordships to determine whether you will feel it necessary to resort to such a measure. But perhaps, my lords, you will ask, with some anxiety and curiosity, what the law of other countries is upon this subject? *My lords, the law of other countries corresponds (as of necessity it must) with our own upon this subject.* As for the law of Scotland, I quote from a learned writer, Mr. Alison (in his *Criminal Law*)—"To amount to a complete bar as to punishment, the insanity, at the time of committing an act, must have been of such a kind *as entirely to deprive the man of the use of his reason as applied to the act in question, and prevent him from knowing whether he was doing wrong.*" And if your lordships refer to the learned treatises (on the criminal law) of Mr. Baron Hume, you will find, that (though more expansively treated and more loosely worded) the law is deduced to an effect substantially the same; and further, I can call your lordships' attention to a case cited by Mr. Alison on the subject. A man was indicted for the murder of another by shooting him; having pursued him over a moor he shot him dead. The defence was insanity, under the delusion that the man murdered was an evil spirit whom the prisoner had been commanded by God to destroy. No one doubted that if the facts necessary to support the defence had been made out to the satisfaction of the jury, the judges (it is clear from the way in which the case was conducted) would have considered it a substantial defence; but the facts were not made out, and the man was found guilty from the defect in the evidence, the jury being of opinion, under the direction of the court, that there was not sufficient evidence to show that at the time the man committed the act he really was labouring under that delusion. My lords, to pass from Scotland to France. In the *Code Napoleon* (the criminal code not less of ancient than of modern France) the French law on the subject is thus laid down:—"With respect to every crime, and every misdemeanour, no man can be made accountable who, at the time he does the act, is under alienation of mind." And though, my lords, I have no particular text writer to quote as to the law of Germany on the subject, I have read many German treatises upon it, in which cases are cited satisfying me that the law of Germany in this respect corresponds with the law of France, the law of Scotland, and our own. The question then is, whether we can, under these circumstances, attempt to vary the law? Is it practicable? Is it possible? and, allowing it to be even practicable, would it be judicious? (Hear, hear). My lords, some persons say, "Define precisely what the law is." *I say, to attempt to define upon a subject with which we are as yet only partially acquainted would be difficult and dangerous.* (Hear, hear.) Let us leave the general law as it stands, and let the judges, before whom prisoners are arraigned and tried, apply the particular facts to the law so laid down. (Hear, hear.) My lords, I have heard it said (it is an argument I have heard in the streets), "The object of punishment is the prevention of crime: you do not punish by way of retribution, or in a spirit of vengeance, but to prevent others from committing similar offences; and, therefore" (it is said), "although a man may be under the influence of an insane delusion at the time when he commits an offence, if he knew the effect he was about to produce—if he knew, for instance, when he fired the pistol that the result would be the death of the party fired at, there is a sufficient ground for carrying the law into execution against him, because we punish to prevent others from imitating the offence." My lords, I should have dealt summarily with this position if I had not found it supported in the writings of a most rev. prelate, not a member of your lordships' house. [The noble and learned lord referred to Archbishop Whately, who, he was here informed, was a member of the House of Peers],—at least had I known that he was, I would have certainly sent him a note upon the subject. That most rev. prelate stated the

position precisely as I have just described it, and gives, by way of illustration, the case of a dog habituated to the worrying of sheep, "who has no moral sense, but who, nevertheless, is punished," for the purpose of correction. This, my lords, is the illustration presented of the position founded professedly on the theory that the object of punishment is not retribution, but prevention—by example deterring others from committing similar offences. But by whom is the example to be presented? By persons incapable of committing crimes? Do you punish a person guilty of no offence? one who is not the subject of punishment? No, my lords, he must, in the first instance, deserve the punishment—if you are to inflict penalties, not in the spirit of retribution, but of prevention. (Hear, hear). My lords, I am surprised that a person of such sagacity, ability, and learning as the most rev. prelate should commit what (with the highest deference for him) I must call such a logical absurdity. (A laugh.) But then as to the illustration. You punish the dog, my lords, not as an example to other dogs (laughter), but for his own correction (hear, hear); so that the illustration is as inapplicable and extravagant as the theory is incorrect and unfounded. (Hear, hear). My lords, if you should be satisfied, then, that the law is as I have stated it, and that no change can with propriety be made in that law, the next question is, *whether any alteration can beneficially be made in the mode of administering the law.* I apprehend, my lords, that this is equally impracticable. A man charged with a crime has a right to be tried by a jury, he has a right to have counsel assigned to him for his defence; he has a right to summon such witnesses as he may think proper for the purpose of his defence; his counsel has the right—nay, it is his duty, to make such observations on the case (both as to the law and as to facts) as he may think available for the interests of his client; the jury are to decide upon the question of fact: and, my lords, over the whole presides a learned judge, whose duty it is to decide on the admissibility and inadmissibility of evidence—whose duty it is to state the law to the jury—whose duty it is to give a practical commentary upon the law with reference to the facts, leaving the general question of fact to the determination of the jury—the constitutional tribunal of the country. That, my lords, is the form and mode of proceeding in this, as in every other criminal case. How can you change it? Is it practicable? If practicable, is it advisable? (Hear). No man can entertain a doubt upon this point. (Hear.) If then, my lords, the rule of law be right, if the mode of administering the law be right, what room is there for legislation? You may say, that in a particular instance the law has not been well administered--that the jury have drawn an improper conclusion of fact from the testimony, that witnesses may have stated opinions not warranted by science, and that the result has been unfortunate. My lords, it is a misfortune you must submit to, because it is not to be remedied by legislation. I do not say this is the case in the present instance; but as it is supposed and asserted by some to be, and I say if it be so, my lords, there is no ground for your interference,—you cannot remedy the evil; legislation cannot reach it. My lords, let me say a few words as to the late trial. It lasted two days. The prosecution was conducted by an hon. and learned friend of mine (the Solicitor-General), holding a high office, and as distinguished in that office by his talents as an advocate, and his learning as a lawyer (hear), as any man who ever preceded him in it. (Hear, hear.) The learned judges who presided, three in number, were among the most eminent and most enlightened of all who adorned the bench. (Hear, hear.) There were the Chief Justice of the Common Pleas and two judges of the Court of Queen's Bench—all men of admitted learning, of great talent, of long experience, of conscientious character and conduct. (Hear, hear.) What was the case laid down by Chief Justice Tindal? Precisely, my lords, what I have stated to you as the law on the subject. I have procured the shorthand writer's notes of the charge, which I will read from, in order to be certain of the precise words used:—"The point which will at last be submitted to you will be, whether on the evidence you have heard you are satisfied that *at the time the prisoner committed the act of which he stands charged he had a competent use of his understanding to know he was doing, with respect to the very act itself, a wicked and a wrongful thing,—a thing which he knew to be wicked and wrongful;* for *if at the time he did it he was not sensible that he was violating*

the law of God or man, undoubtedly he is not a person responsible for this act, or liable to any punishment whatever; but if, on balancing the evidence in your minds as it has been brought before you, you should think *he was a person capable of distinguishing between right and wrong with respect to this act, he is then a responsible agent, liable to all the penalties of the law imposed upon such acts.*" That being, then, my lords, the law as it was laid down by the learned judge, the only question is, whether the jury have drawn a right conclusion from the facts or evidence? It has been objected, "why did the learned judges interpose, and not suffer the trial to take its course to the very end?" In considering the circumstances, and the great feeling excited, it would have been better had this course been pursued. (Hear). But I do not believe, for a moment, that it would have made the slightest alteration in the issue. (Hear, hear.) The reason why I think so is, that while medical men experienced on the subject had been summoned on the part of the prisoner, two medical men of eminence on the part of the Crown, and who themselves had examined the prisoner with a view to the conclusion whether or not he was sane at the time of committing the act, were sitting, during the trial, in court, and were not called on the part of the prosecution, and (not being called) the necessary inference was that their evidence would have corroborated that adduced for the prisoner. *I know from positive information upon the subject that it was impossible that the verdict could have been different from what it was.* In Hatfield's case, where the trial was at bar before the four judges of the King's Bench, there the Lord Chief Justice, in like manner to the Chief Justice of the Common Pleas, interposed and asked the prosecuting counsel whether he had the means of contradicting the evidence given by the witnesses for the defence?—and, on being replied to in the negative, he said at once, "It is impossible to doubt as to the verdict of the jury." Precisely the same course was pursued by my learned friend the Chief Justice of the Common Pleas, and *I can assure your lordships that it is quite impossible for any one to judge of the propriety of the course, unless he were actually present in court during the whole period of the trial.* My lords, I have thought it right to address these few observations to your lordships upon this case. I have only obtained my knowledge of the case from the newspapers. I have yet received no report of the evidence, and therefore I feel myself incapable of forming a judgment upon it; but knowing the great powers and legal ability of my learned friend, the Solicitor-General, who conducted the prosecution, knowing also the high and unspotted character of the judges who presided, I cannot doubt but that justice was fairly and properly administered. Then, my lords, what are the conclusions I draw from these premises? First, that no alteration in the law is practicable, and that we are not called upon to alter the mode in which the law is administered. *The only thing left then, my lords, is to see whether, by way of legislation, any measures of precaution, stronger than those at present existing, can be adopted for preventing the recurrence of such evils.* (Hear.) I am not at present prepared to introduce any bill for that purpose, but I trust in a few days I shall be able to lay one on your lordships' table having that object in view. Of course it is impossible for me, or any man to say, that something of the kind may not occur again. They are events which have happened in all times, not only in this country, but in France, and every other civilized country; however, by legislation, I trust that we may render it more seldom than it has yet been. With respect to the general law upon the subject, probably your lordships might think it advisable to have the opinions of the judges (hear, hear); some of your lordships may think it better that we should legislate upon such a subject upon the united opinion and authority of that learned and venerable body. Should such be the pleasure of your lordships, I will request their attendance upon this house. As I before stated, I am not now in a condition to propose any measure; but I hope, in the course of two or three days, to be able to lay the bill, of which I now give notice, on your lordships' table.

Lord BROUGHAM presented himself to their lordships' notice thus early, because he felt that their lordships might expect that he should give his opinion upon the subject, he having been the first who called his noble and learned friend's attention to the matter, and although there was no question before the house, he trusted their lordships would bear with him while he

offered a few observations on the most important question then engaging the attention of the house. He entirely agreed with his noble and learned friend on the woolsack, in the panegyric which he had so justly passed upon his hon. and learned friend the Solicitor-General, and upon the three judges who presided at the trial. He had the utmost possible confidence that everything was done which the exigencies of the case required; without having the slightest intention of imputing blame to any one, he, on that, as on many other occasions, felt himself disposed and authorized to express deep regret—to say that he deeply lamented the course which, perhaps necessarily, had been pursued on a late occasion. He would infinitely rather that the case had been tried to an end—that it had been gone on with until it had reached its natural and appointed conclusion—that witnesses had been called while there was one in waiting—that the Solicitor-General should have been heard, commenting upon the evidence and upon the doctrine and the law which were laid down by the counsel for the prisoner—and above all, that the jury should have had the advantage of hearing the summing up of the learned judge, and that that learned judge should have had an opportunity of summing up the evidence, and commenting upon it, and setting before the jury explicitly the grounds upon which his lordship thought there was no case for a conviction. He must have seen a very incorrect account of the proceedings, for in the report of the trial which he had seen it appeared that certain questions were asked and certain evidence given which ought not to have been permitted. In that report it appeared that certain questions had been put which the law did not allow, and that statements were drawn from witnesses for the defence which by law were not competent and admissible in evidence. He must conclude that the account he had seen of the trial was a very erroneous one. Lord Hardwicke, when presiding as Lord High Steward at the trial of Earl Ferrers in 1760, refused to allow such questions as he had alluded to to be put to the witnesses. The questions were propounded, but the then Attorney-General (Mr. Pratt) objected to them as being inadmissible, and Lord Hardwicke at once said the questions were not legal, and they were not put. He said, "You shall not ask the witness whether the facts which have been sworn to by other witnesses in his presence amount to a proof of insanity, supposing them to be correct; you shall ask him what are the indications of insanity, and then judge for yourself." It was not legal to remove the witness from the witness-box, and transfer him to the jury-box, by the mode of asking him certain questions. (Hear, hear.) However eminent the medical man might be—however deeply he had studied that melancholy but most interesting part of his profession—however accomplished to form an opinion upon cases of insanity, it was most improper and illegal so to put questions to him as to take from him the character of a witness and make him a juryman. *He ought to be asked what symptoms or tests of insanity he could depose to,* but *after that, it ought to be left to the jury and the judge to declare the guilt or the innocence of the party accused.* He fully concurred in all that had fallen from his noble and learned friend on the woolsack in the most luminous statement with which he had favoured the house—*it was one which was well calculated to make a deep impression upon their lordships' minds.* He had most clearly stated what the law was in respect to a defence founded upon insanity. But *still the accountability of persons to the law of the land was but little understood.* Some minds, by brooding over injuries which they had actually received, might not be deluded as to the existence of those injuries, but grossly and grievously exaggerating the amount of them might, if it acted upon some mal-conformation of the mind, end in insanity. Such a person might not be the object of punishment to his Maker; but they were human legislators; they had no means of judging him, they punished for the mere purpose of deterring others from repeating the same crime of which a party had been guilty. A man with such a mind as he had pictured was, undoubtedly, accountable to the law. Upon that subject, he would just inquire what was the test laid down by the learned judges? In doing so, he must express his earnest wish *that those learned persons had always used the same language when laying down the law of responsibility.* Generally the judges said, that in order to make a man responsible he must be capable of knowing right from wrong; that was the usual way in which it was left to juries. But then again,

some of them said a man must be capable of distinguishing between good and evil—*most difficult thing for many to do;* but there was a variation, and a very large one too, which was deeply to be lamented. Then came a third distinction—*a man must know what is proper or wicked. Now, there were four distinct tests, four different forms of expression, every one more meagre, every one more difficult to lay hold of than the first, and the simplest.* He (Lord Brougham) knew what the learned judges meant by right and wrong, but *he was not sure that juries did, and he was certain the public did not.* First of all came the question,—did the unfortunate individual know what he was about? Did he know that he was killing a man, that he was depriving a fellow-creature of his life, or might he not fancy he was destroying some evil spirit, or shooting a bird, or any of the other many delusions which they knew had existed in men's minds? *A man in such a case was not a subject for punishment either at a human or the divine tribunal.* But the difficulty always arose after they had ascertained the fact that he knew what he was about, that he took those precautions which a rational man would do to accomplish a particular purpose; *then arose the question—did he labour under such a delusion as that he could not distinguish between what the learned judges call right and wrong?* A man may be possessed of such peculiar notions that he might think it a perfectly right thing to prostrate to the ground a man of whom he had formed a prejudiced or extravagant opinion. Bellingham was tried and properly convicted, though many men had found fault with the refusal of the learned judge to give time for the production of evidence as to his insanity. It was deeply to be deplored; he would go further, and say it was profoundly to be blamed. He had never seen Lord Erskine—he had never conversed with that illustrious advocate and great criminal lawyer—he had never seen him more moved to indignation, than he was at the refusal of the Chief Justice to postpone the trial of Bellingham. Affidavits were produced from his family, and also from many persons who had known him from infancy, deposing to the fact of his former insanity; but the evidence was 200 miles off, at Liverpool, and the Chief Justice thought it right to refuse a fortnight's delay. He (Lord Brougham) deeply blamed the indiscretion, for it gave to that trial the colour of unfairness. Happily upon the present occasion time was granted (hear, hear), and the result was known; but *Bellingham, as was well known, at the trial, and up to the very time of the execution, had his mind so perverted, that he could never be brought to look upon the deed he had committed as a crime. He considered that it was an inevitable circumstance, and one that could not be avoided.* His (Lord Brougham's) intimate friend, Mr. Stephen, one of the most intimate of the friends of Mr. Perceval, who felt so much for his loss that for some hours after the awful deed had been done his mind was as a blank,—Mr. Stephen, not from motives of impertinent or idle curiosity, but from motives of humanity, visited Bellingham several times while he was in custody. There was but little time granted him—the deed was done on Monday, the 11th of May, and by five o'clock on Monday, the 18th of May, the body of Bellingham was in the dissecting-room. The haste of the proceedings was never to be forgotten—he was committed, examined, tried, convicted, and executed, all within the space of seven days, but during that period Mr. Stephen saw him twice. *Bellingham was not cognizant of having done wrong. He lamented the death of Mr. Perceval, and spoke of him as a respectable and estimable character; he said that no man more lamented than he did the loss which his family, his friends, and society at large had sustained; but when he was asked, "Why, then, did you do it?" the answer was, "Oh, that was perfectly unavoidable; there was no wrong in doing it at all; I could not help it."* Here was an end of his knowledge of right and wrong; he could not distinguish between them. Then, *what was the true distinction which the law drew between right and wrong? Why, lawyers told us, that that which was according to law was right, and what was contrary to law was wrong. Then, why not say so in so many words?* (Hear, hear.) That was the test he suggested. If the law was not so, as he said it was, that it had no other meaning—then the law wanted no change; if the law was not as he said—if he had misunderstood the learned judges—if they meant by right and wrong what any man might think by any idiosyncrasy of his own nature, as he was sure they did not—then he agreed with his noble and learned friend

on the woolsack, that they should call the learned judges before their lordships, and let them give their answer, not only to the question what they understood by right and wrong, but also to half-a-dozen other questions, which would be most easily put and most easily answered. This would at all events tend to establish uniformity in laying down the law in future, and *banish the words "wicked," "wrong," "improper," "blameable," which only tended to perplex; so that there would be one certain principle, which not only judges, but the public, and persons partially deranged, would be capable of understanding.* This led him to notice what had fallen from the most rev. prelate (the Archbishop of Dublin), which was erroneous; but in candour to the most rev. prelate he acknowledged, that not being familiar with the law, if not justifiable, the error was at least excusable. See how very likely a person unlearned in the law might fall into the error. *These unfortunate persons were generally most acute and most astute to defeat all inquiries into the state of their mind, and to conceal their own insanity.* But there was another astuteness which these unfortunate persons had. Whilst they showed an acuteness and cunning in protecting themselves against inquiry and in preventing your finding out the ground of their insanity, they had this tact,—that if put upon their own trial, nine out of ten would be very ready to let it appear that they were insane. These poor persons, *many of them, knew they were insane, and knew that, in that condition, the law could not touch them.* He (Lord Brougham) had had experience of this fact when filling the post now occupied by his noble and learned friend on the woolsack, and at the bar, and *other public men knew that these persons considered that the law did not take notice of them; that they were above the law.* The case of Martin, who set fire to the Cathedral at York, had been very much discussed in the lunatic asylum there, and *the observation was that he was like themselves, and one of whom the law took no notice;* and other persons not in confinement, but going about, might entertain the same opinion. All these considerations made it the more necessary to ascertain what the law was, and *whether there was not some means of throwing the responsibility of looking after such persons upon some parties, for the sake, first, of the community, and secondly, of those unfortunate persons themselves; and whether there should not be a more summary mode of detaining such persons than the law now gave.* But as to the mistake, the very natural mistake which the most rev. the Archbishop of Dublin had made;—the most rev. prelate knew that the law was not retributive, but preventive, and he said, if it were so, and if the life of a lunatic was of very little value, why not take away that life, upon that principle of punishment, seeing that madmen might be deterred by example? He (Lord Brougham) *thought this was an exceedingly fallacious argument.* He had had many conversations on this subject with an old friend, whose general knowledge and acquirements peculiarly entitled him to give a valuable opinion—Sir H. Halford; and he had asked him whether madmen were capable of being deterred by the motive of fear? and he said decidedly that they were—he had no doubt about it. It was said, we punish for prevention only, and not for retribution; but *we confine lunatics guilty of such acts for life, which is the next thing to capital punishment,* and yet they are not accountable agents legally, and are not guilty of any crime, being incapable of discerning right from wrong; they were, however, punished by the law as it stood, being shut up for life. But suppose they should get cured, and should recover; suppose they should cease to be insane, and should become moral agents, accountable like others to human tribunals; were they still to be confined? Some were let out; others were still kept in confinement. The law, therefore, was not uniform. If it were right to confine a person for life in order to prevent him from doing mischief, that was one thing; but, said the Archbishop of Dublin, you hang people because hanging will prevent others from committing the same crime. He thought it right to call the attention of his noble and learned friend to this point. When he spoke of a test of knowing right from wrong, he wished to show what had been done in the case of Lord Ferrers. Lord Ferrers was known to have been insane; but, as it appeared that he was capable of knowing what he did and judging of the consequences, he was pronounced guilty and executed, though it was in evidence that they were going to take out a commission, and treat him as a lunatic. In the case of M'Naughton, he

had been four or five times to Sir R. Peel's house to see what sort of a person he was, and he formed a conclusion that a certain individual was Sir R. Peel; having seen that individual four or five times come from the house and proceed to Sir R. Peel's office, *he drew the same conclusion that a sane man would have drawn*—namely, that it was Sir R. Peel. *He was mistaken, but so might any sane man have been.* He meant to kill Sir R. Peel. (Lord Campbell expressed dissent.) He understood so—that the person he shot he supposed to have been Sir R. Peel. *He was mistaken, but he took the same steps which a sane man would have done.* He purchased a pistol—to make all sure he purchased two pistols; he bought powder and ball; he charged both pistols; he waylaid his victim, and fired in such a manner as to kill him, and he was going to fire the other pistol (Lord Campbell again dissented)—it was perfectly indifferent whether he was going to fire the second pistol, or not; *he did what a sane man would have done, till he was stopped by a policeman.* That Sir Robert Peel was the object of this person was clear, and *he had acted so very like a rational man, that it was thought there ought to be some means of punishing persons labouring under that peculiar malady.* The Archbishop of Dublin thought that an act of this enormity should be a punishable offence; but he (Lord Brougham) was of opinion, with deference to the most rev. prelate, that *he had innocently fallen into a very great error.* It was clear, that there were cases of partial insanity—monomania, as it was termed, though improperly, as there might be two points upon which a person might be insane. *The question, whether a person was legally sane or insane, whether the act was one of guilt or not, must depend upon his state of mind immediately before and at the time the act was committed.* If he knew what he was doing,—that he was killing a man; if he had contemplated his purpose, and *knew at the time he was doing the act that it was an act which the law had forbidden,* that was a test of his insanity, and he (Lord Brougham) was sure that the judges would give no other test, and *he should go down to the grave in the belief that this was the sound, consistent, and true test.*

[Lord Brougham cannot be ignorant of the value of Mr. Sampson's "Criminal Jurisprudence," unless the above be an inaccurate report; for *all that is original* or not obsolescent in his speech is evidently derived, but without acknowledgment, from that gentleman's second edition of his "Criminal Jurisprudence" (pp. 6, 23, and 115): consequently, the public have been electrified by his Lordship with *borrowed*—with *phrenological* thunder. Alas! in this ignoble career his Lordship has long since been outstript, and is *daily* jostled by the greatest modern authorities, but without any one but the phrenologists even dreaming of the shameless and *prevalent* system of plagiarism. Such is *mere animalized intellectual greatness*, but *not real magnanimity.*—See *Athenæum*, March 18, 1843.]

Lord COTTENHAM *concurred in the opinion of his noble and learned friends, as to the sense which the judges put upon the terms "right" and "wrong."* It had been said, that insane persons might be deterred by the fear of punishment, though incapable of distinguishing between right and wrong; but, *though the fear of punishment might operate in a lunatic asylum, and the dread of discipline might regulate their conduct, such a motive could not act upon persons at liberty.* His noble and learned friend had said, that persons in a lunatic asylum had been aware that they were insane, and had spoken of an insane person as not liable to punishment because he was "one of them;" but *he (Lord Cottenham) thought such examples were rare;* in his experience he had found that persons labouring under the disease were not aware of their delusion: they were, in fact, deluded, because they were not aware of their delusion. How could such persons be subjected to punishment by law? *He did not see how a more correct definition could be given than had been laid down by the authorities.* It was for the judges to lay down to juries what the law was, and, if juries found verdicts accordingly, no necessity for an alteration would arise. He apprehended that the suggestion that it was de-

sirable to hear the observations of the judges, was not because there was any doubt about the law, but because it might lead to uniformity of practice, and afford a lesson to juries hereafter, that they might know what their duty was. *He confessed he looked with great jealousy at any material alteration of the law as to the confinement of persons on the ground of insanity. This was a subject of great delicacy, and his noble and learned friend would bear in mind that persons were very apt to attribute insanity to others.* A medical gentleman had entertained an opinion that no person had a mind altogether sound. The statute of George III. gave power to magistrates to secure a person who meditated an unlawful act, and that law might be somewhat enlarged.

Lord CAMPBELL said he should be sorry, for the sake of the character of the administration of justice in this country, *if any doubt should be thrown upon the verdict lately given in the Central Criminal Court,* and it seemed not to be the intention of his noble and learned friend to throw any doubt upon it. *He had no doubt that M'Naughton was properly acquitted;* but he agreed that it would have been more satisfactory if the trial had gone to a conclusion, and a reply had been heard from the Solicitor-General, and there had been a summing-up by the judge. His noble and learned friend had said that the law was correctly laid down by the learned judge ; but what signified how the law was laid down when the trial was stopped? when the judge asked the Solicitor-General if he could rebut the evidence, and the Solicitor-General said he could not, and would not press the case further? Let it not be supposed that he (Lord Campbell) meant the slightest reflection upon the learned judge who so highly adorned the bench; but *he did regret that he should have been so impressed with the evidence of the medical witnesses,* because the impression made upon the public mind was, that if a certain number of medical men said that a person under trial was insane, the trial must be stopped, and *cadet quæstio. He contended that the question ought not to have been put; that was for the jury, not for witnesses, to decide the point.* It would be dangerous if it should go abroad that the opinion of medical men could acquit. He knew that Dr. Haslam was of opinion that all persons were insane. The case of Hatfield differed from that of M'Naughton. In that case it was proved, not by medical witnesses, but by persons who knew the facts, that he had been in the army and received a severe wound in the head, that he had been discharged from the military hospital as insane, that within three days of his committing the act he declared he had had an interview with the Supreme Being, and that *he had made an attempt upon the life of his own child, whom he tenderly loved,* within a few hours of his committing the act for which he was tried. He (Lord Campbell) thought the law required no alteration, since by the law as it stood partial insanity gave no immunity. He would read a short extract from Lord Hale :— "And this is the condition of very many, especially melancholy persons, who for the most part discover their defect in excessive fears and griefs, and *yet are not wholly destitute of the use of reason;* and this partial insanity seems not to excuse them in the committing of any offence for its matter capital ; for doubtless most persons that are felons of themselves and others, are under a degree of partial insanity when they commit these offences; *it is very difficult to define the invisible line that divides perfect and partial insanity ;* but it must rest upon circumstances duly to be weighed and considered both by the judge and jury, lest on the one side there be a kind of inhumanity towards the defects of human nature, or on the other side too great an indulgence given to great crimes." *So that it was necessary to consider the state the person was in at the moment, and whether he could distinguish between right and wrong.* He much wished that there should be a more authoritative declaration of the law on the subject than had hitherto existed, and he rejoiced that his noble and learned friend had suggested to the house to take the opinion of the judges, *in order that the profession and the public might know what question was to be put to the jury.* The public were now inundated with medical works on the subject of insanity, and on the responsibility incurred by insane persons. Those books were read by persons, and *their minds became filled with discussions about homicidal tendencies and homicidal propensities, and men but too readily caught up the idea that persons very prone to homicide were in a state of insanity.* Alison's observations on that subject were not unworthy of their

lordships' attention ; he said, that few men read about other persons, or about things in general, and *though mad as regarded themselves and their own affairs, they still understood the difference between right and wrong ; the delusion which they laboured under merely incapacitating them for applying any moral rules to their own conduct ; but their mental alienation was too great to allow of their being held responsible for their actions.* That writer further observed, that *amongst madmen few were aware that murder was a crime, for they generally appeared to think themselves nowise blameable, and to justify their conduct on the ground that their victims were in a conspiracy against them, or were their mortal enemies.* If the doctrine of that writer were sound, any man in a fit of jealousy might murder the person who he thought injured him ; wherever there was a suspicion of injury revenge might be gratified with impunity. He, therefore, wished that the law might be authoritatively laid down. Looking to the directions of the judges in the cases of Arnold, of Lord Ferrers, of Bellingham, of Oxford, of Francis, and of M'Naughton, *he must be allowed to say that there was a wide difference both in meaning and in words. He would repeat, therefore, than an authoritative statement of the law would be highly desirable, and, if necessary, a declaratory act should be passed.* Lord Mansfield narrated the circumstances under which a man named Wood indicted parties for conspiracy and false imprisonment. They took him from Westminster to London, and confined him in a lunatic asylum. At the first trial in Westminster-hall, Wood being examined as a witness in support of the indictment, for a whole hour baffled the cross-examination of counsel; at length a string was touched which disclosed the nature of his malady. He subsequently preferred a fresh indictment, and, remembering what had occurred on the previous occasion, became more guarded, and, notwithstanding all the ingenuity of the defendants' counsel, they must have been found guilty, if the short-hand writer who took notes of the preceding trial had not been produced to read the evidence then given by the witness, when he stated that he was " the Saviour of Mankind." With respect to the unhappy persons acquitted on the plea of insanity, the present practice appeared to him to be most mischievous. *Unfortunately, it so happened that persons acquitted under those circumstances at once became public characters. To hundreds and thousands they became objects not only of curiosity, but of courtesy and respect ; they were the envy of many who were confined in the same places, often enjoying more comforts and indulgence than their companions in confinement. It was quite his opinion that such persons should be removed from the public eye, that they should be heard of as little as possible ; that the treatment they received should render the example effective upon the public mind, deterring others from like offences.* With these observations, he should leave the matter wholly in their lordships' hands, and he sincerely rejoiced that his noble and learned friend had taken it up.

The LORD CHANCELLOR said, that as to the place or mode of confinement, persons so acquitted might be disposed of in any manner which her Majesty directed. The attention of Government had certainly been directed to the subject, and *in future such persons would not be so confined as that no one should have access to them ; but it would not be permitted to make public spectacles of them.* If it were their lordships' pleasure to require the opinion of the judges, he should take the earliest opportunity to carry that object into effect.

Their lordships then adjourned."

—*Debate in the House of Lords, Monday, March* 13, 1843, *from* " *The Times.*"

APPROXIMATION TO, OR ADOPTION OF, *SOUND* AND PHRENOLOGICAL VIEWS OF INSANITY.

"INSANITY AND THE TRIAL OF M'NAUGHTON.

Without condescending to express our horror at the murder of Mr. Drummond, and of all murders of a similar character, we must have the moral courage to express our abhorrence at the public feeling exhibited against the acquittal of the culprit by the jury. We have the very greatest reverence for the jury system, but have very little respect for juries in particular. *They are generally masses of prejudice and servility; but here the jury has done its duty.* The acquittal of the assassin, if against the law, we must take merely as an expression of horror at the system of capital punishments, and *we hope that juries will go to any extreme rather than execute their fellow creatures on the principle that "blood will have blood." Juries ought not to commit murder on the notion that two blacks make a white. That there was a degree of insanity in M'Naughton's case we must believe,* and the only justification of taking his life would have been the utility of the sacrifice to the safety of other lives; but *it is our firm conviction that had he been hanged, according to the present fashion, or had he been burned, boiled, or buried alive, according to the acts of Henry VIII., or George III., not an atom of a life would now be the more or the less safe. The verdict is an expression of the humanity of the age.* Poets are not legists, and *our greatest of living bards* sends forth the following unhappy lines:—

> "Ye people of England! exult and be glad,
> For ye're now at the will of the merciless mad.
> Why say ye that but three authorities reign—
> Crown, Commons, and Lords?—You omit the insane!
> They're a privileged class, whom no statute controls,
> And their murderous charter exists in their souls.
> Do they wish to spill blood—they have only to play
> A few pranks—get asylum'd a month and a day—
> Then heigh! to escape from the mad-doctor's keys,
> And to pistol or stab whomsoever they please.
>
> "Now the dog has a human-like wit—in creation
> He resembles most nearly our own generation:
> Then *if madmen for murder escape with impunity,*
> *Why deny a poor dog the same noble immunity?*
> So, if dog or man bite you, beware being nettled,
> For *crime is no crime—when the mind is unsettled.*"

A general cry for vengeance has been raised, and the attention of both Houses of Parliament has been hastily called to the subject, with the view of amending the law. *If it is to be altered in the fashion that has been suggested, so as to warrant the seizing and putting under restraint all persons who may appear to be labouring under mental delusions upon any matter, there is every probability that a vast deal of injustice will be done. It will be a most dangerous inroad upon the liberty of the subject, if an intention to do mischief is to be inferred, where the acts of the individual do not lead to the direct proof of the existence of that precise intention.* Nothing short of the positive, open expression of an intent to do mischief, or of the silent preparations to carry out such an intent, ought to be deemed sufficient evidence of danger to warrant the casting of a man into a madhouse. *To reason rightly on wrong data, or reason wrongly on right data, alike presents a state of mental delusion;* and *this definition is so wide as to fit the mental capabilities of a large number. Very many men are under mental delusions as to what constitutes their duty to their Creator, and as to what is acceptable in his sight.* There may be Churchmen and Dissenters who, adopting misrepresentations of the tenets of Puseyism, view the talented leaders amongst the Puseyites with alarm and horror;

but it would be unjust to assume, from any unusual earnestness or bitterness in speaking of them, the probability of a hidden intention to do them some bodily harm, because they are in a state of delusion as to what the Oxford Tractarians really maintain. *A state of gross error as to facts or principles in politics may exist, without neccssarily leading to a desire to commit bloodshed;* but *to deprive of their liberty all men who are in a state of mental delusion on these matters, would bc preposterous.* And yet to this length would some writers lead us, who call for new legislation on the subject, and who inquire, "Who can tell how a man will act who labours under an insane delusion?" and who even venture to affirm that "no person is entitled to presume, because a man labouring under mental delusion is apparently harmless, that it is therefore safe to allow him to be at liberty." *The Times*, in commenting on this subject, asks the physicians who gave evidence upon this occasion, *to define where sanity ends and madness begins, and what are the outward and palpable signs of one and the other?* The writer observes, "Mr. Cockburn laid it down that a man might be mad on one point and sane on all others; that M'Naughton, *although he wrote very excellent business-like letters, in which he evinced no slight shrewdness and providence, and although he expressed himself on general topics in a clear, intelligent, and intelligible manner, yet unfortunately laboured under a species of monomania, which the learned counsel called 'homicidal monomania.' In this proposition he was borne out by the evidence of Sir A. Morison and Dr. Monro, who declared their conviction that the prisoner had laboured under a morbid delusion, of which this murder was the climax. Now, we do not presume to question the correctness of this theory;* in fact, we have heard it stated before, though not *in quite such learned phraseology.* It is usual enough to hear it advanced that all men are less sane upon some points than others; that *all men have some oddity, some queer habit, some peculiar fancy, by fostering or humouring which exclusively they would become decidedly mad on one particular point. This is common enough.* But we never before heard this self-engendered insanity pleaded in defence of crimes to the perpetration of which it might have contributed. However, it is neither our duty nor our wish to cavil at the verdict of the jury. They, doubtless, performed their part conscientiously enough. We only want to know, for the benefit of simple folks, *what in future is to be considered sanity?* It appears that it is not enough that a man should talk and write correctly on matters of business, give a good account of what is passing around him, or pronounce a correct opinion of men and measures, in order to be considered sane; but, if he indulge in the humours of a morbid melancholy, and cherish the fancies of a diseased imagination, this is sufficient to obtain for him the character of a monomaniac; and if he only proceeds to commit murder, that is the climax of his monomania." *To us it seems immaterial whether insanity be self-engendered or otherwise. It is enough to justify acquittal of a crime that the party be, beyond all doubt, unaccountable for his actions.* We doubt the practicability of altering the law with advantage, for the law only excuses crime when the person committing it is in such a state of mind that he is incapable of reflecting on the criminality of the act; and the law already admits of the detention of persons who express the intention to commit violence on others, or of persons known to be in a state of dangerous insanity. Those who are seeking a change in the law, are, in fact, those who impugn the propriety of the verdict given by the jury. Our opinion upon this point is *exactly* expressed in the *Caledonian Mercury*, of Thursday, where it is remarked that,—"*In the case of M'Naughton, we do not see how it was possible for any jury to have arrived at a different conclusion from that actually found, so long as the plea of insanity shall be held valid, and which it must ever bc in the codes of all civilised nations. From the evidence adduced, it appears that this wretched man was haunted by torturing apprehensions, which gave him no rest. He was the victim of some frightful delusion that distorted his vision, and conjured up persecutors wherever he went.* We find him waiting on the Lord Provost and other official individuals in his native town, Glasgow, and seeking their protection against some parties who were in a conspiracy against him. *So bewildered and vague were the ideas of this miserable man, that he did not trace his imaginary wrongs to any individual with whom he had come in contact in the ordinary intercourse of life, and which might have afforded a germ to*

these extravagant tendencies; but his fears are of all classes; at one time he dreads the Catholics, and at another the Tories. In this state of mental torture he leaves Glasgow, and in time seeks the shores of France, *in the hope of there finding a respite from those phantoms of his own disordered intellect. That the dreadful act he committed arose out of those troubled visions, and was a desperate effort on the part of this man to rend asunder the toils with which he fancied himself encompassed, was clearly shown in the course of the trial.* When, therefore, we hear parties calling loudly for an alteration of the law, we are rather at a loss to discover their specific object. At present the law is, that insanity is no justification unless it not only existed at the time the act was committed, but is proved to be the direct cause of the act itself. *We will not call it a humane principle of our law, for it is a part of that great moral law written on the heart of man by his Creator—that to direct the public vengeance against one who is a blind unconscious agent, however lamentable the result, is to attach criminality to the avenger.* To talk, then, of reforming the law in reference to this case of M'Naughton, is to assume, that if the law had been different, it would have even pierced the understandings of men in his unfortunate condition, and restrained their hands. To be plain, we suspect it just comes to this, that if madmen, or, at least, monomaniacs, were, in regard to punishment, treated like those who had reason, however depraved, there would be no such excesses. Even in their dark hours, a ray of light, exhibiting the scaffold and the horrors of capital punishment, would open, as it were, a safety-valve for the public. *Anxious as all must be to see any more effectual check provided against those subtle and dreadful evils, we greatly doubt whether the remedy is to be found in refinements on the existing law."* Dr. Munro deposed that *a monomaniac may be competent to transact the ordinary business of life, and that he may know the distinction of crimes generally, but yet be under the delusion that murder would not be a crime in some particular instance. The judge, therefore, properly left the jury to determine whether the act was committed under a delusion or not, and whether it had been committed by a man who could be held responsible for what he had done. The jury could scarcely arrive at a different conclusion than that which they pronounced."—From "Weekly Dispatch," March* 12, 1843.

"ON THE AMENDMENT OF THE LAW OF LUNACY.

The result of M'Naughton's trial has naturally caused a great sensation in the public mind. *There were many who, from the first, looked anxiously for the event; and feeling how much the security of life was involved in the matter, strove against the ordinary dictates of humanity in wishing that the intended defence of insanity might not be successful.* Oxford's case, followed as it so soon was by a similar crime, had made a great impression upon men's minds; and a conviction was fast gaining ground, that the security which the law once afforded to human life was being greatly diminished. *These fears have been confirmed by the late trial. It was impossible, indeed, for the learned judges who presided, or the jury by whom the case was tried, to come to any other conclusion than they did, after hearing the evidence which was given*; but it is plain, that, in very many cases, there will be the same grounds for acquitting a prisoner.

The gradual development of this plea of insanity from the time when it was seldom heard of until the present, when it seems to have become *the defender-general of great criminals*, is curious. As men became more enlightened, they naturally shrunk from subjecting the body of the suicide to the indignities prescribed by the relics of a *barbarous* code, and the rule of law which made insanity an excuse for crime, presented an easy mode of escaping from the difficulty; and other motives concurred to encourage *this subterfuge.* Regard for the feelings of relatives and friends, *the difficulty of supposing any rational motive for such an act;* these and other things were but feebly opposed by considerations of danger to society,—a matter too remote and difficult of appreciation to meet with any notice on such occasions. And thus it came to pass, that, for many years, we have seen juries upon coroners' inquests pronounce verdicts of insanity upon evidence so slight, that it would have been insufficient to satisfy an ordinary mind of the truth of any other disputed fact. From the trial of him who takes away his own life to that of him who

takes away the life of another, the transition is easy ; and, as in the former case, juries had been induced by the want of any *apparent* motive for the crime to assign it to insanity, it was natural to pursue the same course in the latter. Thus, the more unusual the crime, and the more obscure the motives of the criminal, the easier it is to set up a case of insanity. Evidence is given of circumstances which bear *some* appearance of insanity, and then the crime itself is made to reflect back the light thus thrown upon it, and to give them a greater prominence. In this way the able counsel who defended M'Naughton argued, from *the open manner in which the deed was done, and the certainty of its being followed by punishment, and that the punishment of death, that it could not be the act of a sane man.* It was indeed, in this point of view, as much a suicidal act as if he had shot himself instead of his victim.

In M'Naughton's case, the law respecting insanity seems to have been carried to a greater extent than in any previous case ; but it is quite in accordance with views which have for some years past been published by various writers on the subject. There, indeed, circumstances were proved from which, previously to what was called *the climax of the homicidal monomania*, the existence of disease in the brain might have been inferred, so as to lead to the use of preventive measures ; but this, it is said, is not always necessarily the case, and *a crime may be committed in a state of insanity of which there has not previously been any ground of suspicion.* On a former occasion (vol. v. p. 617 ; vol. vi. p. 193) we noticed the theory of a modern writer, that crimes of violence are in all cases the result of a maniacal disorganization or moral insanity.* The second edition of that work has just been put into our hands, and we gladly avail ourselves of the proof it affords of what we state. Quoting the words of Sir Wm. Ellis, who says, "In insanity arising from moral causes, diseased action of the brain is rarely produced by any sudden shock, but it generally arises from the continued operation of some exciting cause, producing excessive vascular action in the brain or some part of it. Unfortunately, the alteration in the sentiments and conduct, in many cases, is so gradual, that diseased action of the brain may have existed *without being suspected* until diseased organization (the incurable stage of insanity!) has actually taken place." Mr. Sampson observes, "Thus it will be seen, that insanity may go on even to its ultimate stage, without being suspected ; and that it is, therefore, impossible, except by a post-mortem examination, to assert that any given individual is not only not already visited with the incipient growth of the disorder, but that he has not passed even to its last and incurable stage." *If this be true, it entirely precludes the right to punish a criminal on the ground of his responsibility to the law.* If the state of irresponsibility may exist without any indication of it previous to the act for which he is made responsible, that act being itself an indication of irresponsibility, it is obvious that he must either not be punished at all, or some other reason must be found for it. And laws which are founded upon the idea of men being responsible to them, and which profess to treat as criminals only those who break them whilst known to be responsible, are rendered powerless by the extension of opinions, which treat obedience to the laws as a test of sanity, and any departure from it as an indication of an opposite state.

To us indeed it seems, that *the late trial must be regarded as a triumph of this theory, a practical recognition of it of the most important kind.* Whether it is correct or not this is not the place to inquire ; but *it will evidently embarrass the administration of the criminal law, unless some alteration is made.* If the mountain will not come to Mahomet, *Mahomet must go to the mountain*—if medical science will not adapt itself to the law, *the law must adapt itself to medical science.*

We had no sooner perused the report of the trial, than we felt the necessity of this. And *probably the feeling was very general, at least, we may conclude so* from what passed the other night in the House of Lords, when the Lord Chancellor, and Lords Brougham, Denman, and Campbell, agreed in thinking that *some measure ought to be adopted respecting it. What that should be seems now the only matter for consideration.*

* Criminal Jurisprudence considered in relation to Cerebral Organisation. By M. B. Sampson, London.

It would ill become us, when the ablest and best informed men hesitate about devising a remedy, to suggest any thing of the kind; and we can only venture to indulge in a few speculations upon the subject. Mr. Sampson, as the natural consequence of his theory, that crime is the result of a mental disorganization, contends, that all infliction of punishment as such must be abandoned, and efforts to cure the patient be substituted. A few weeks' labour at the treadmill is no remedy for that disease of the brain which causes the monomania of picking pockets, or a prolonged residence in a penal settlement for that which causes the monomania of imitating other persons' handwriting; such modes of treatment ought not, therefore, to be adopted. *Thus, the whole of the present system of punishment is struck at.* How an adequate substitute can be found, or a sufficient number of criminal hospitals be provided, it is not very easy to perceive; and we think a nation would pause long before they made such a change; but is it right, when upon the subject of punishment, to regard only the cure of the criminal? Laws, we apprehend, are made for the protection of society; and every member of it, in return for protection, submits himself to be bound by such rules as may be necessary for obtaining it; and if it be necessary for the protection of life that those who, by reason of insanity, are not strictly responsible for a murder, should be subjected to treatment in the nature of punishment, we think the rights of the individual must bend to the rights of society. *The punishment of an insane person might not deter others really insane,* but there would be no temptation to simulate insanity; and even where there existed a morbid desire to take away human life, it might be counteracted by the fear of the consequences. We have *hastily* thrown together the thoughts which were immediately suggested by the late trial, but *the subject deserves much consideration;* and we shall probably resume it in a future number."—*From "The Jurist," March* 11, 1843.

"CONSIDERATIONS ON THE CASE OF M'NAUGHTON.

But now, leaving the medical details of the case, we would advert to *one of the most momentous, and what has been made one of the most difficult, questions in jurisprudence or in morals.* The intricacy of the subject resides, first, *in the difficulty of determining the precise line of demarcation between the extremes of bad temper, fanaticism, or moral depravity, and the commencement of actual insanity;* and, secondly, *where the insanity of the party is indisputable—in the difficulty of holding, with a just hand, the balance between the compassion that is due to a miserably afflicted being, and the value of an indefinite number of human lives which may be sacrificed immediately to his hallucination, or, more remotely, to the contagious example of his misguided acts.* The first of these difficulties, however, applies to the subject when regarded in a moral or pathological, rather than in a legal light, *because the law never has made, and never can make, subtle distinctions between sanity and insanity;* while, at the same time, extenuating circumstances—arising out of the various conditions of body and mind in which an individual may have been placed at the time of the commission of a given act—have always been allowed some influence in modifying the rigid course of criminal law. *It is with the second difficulty, then, that we have principally to deal—namely, that involved in the case of a lunatic who commits murder.* In such a case the murder may have been committed during a paroxysm of furious insanity, or during a lucid interval, or, what is much more frequent than either, under the influence of a permanent monomania. If the crime have been perpetrated during a lucid interval, the law cannot deal with the lunatic otherwise than as with a sane person, although, *in the event of his execution, a moral view of the case must leave a painful impression on the mind arising from the doubt how far a lunatic is at any time responsible for his actions.*

But, if the fatal deed have been committed under circumstances which show that the perpetrator is unequivocally mad at the time of its commission, the law, in its present state, acquits him of all guilt. The question, then, becomes whether the law ought to remain as it is in such cases, or to be altered. It has been contended that a lunatic can incur no moral guilt under any circumstances, and that the argument must, therefore, be taken up on an entirely different ground. *The execution of a lunatic for murder could answer*

no end of justice; but the points for consideration are, whether his execution would act as an example to deter other madmen from similar desperate deeds, and, admitting that it would do so, whether we should be justified in sacrificing the life of one madman in order to promote the safety of an indefinite number of other lives.

Now, on the one hand, it may be argued, first, that *we have no right, on the ground of simple expediency, or to prevent a contingent evil, to sacrifice the life of any human being;* for, on the same principle, we might be justified, at the first outbreak of an highly malignant and contagious disease, in putting to death the first persons who were seized with it, and burying their bodies with quick-lime. Secondly, that madness being the most dreadful calamity which can afflict a human being, *it would be the height of cruelty for man to raise his arm against one already so awfully stricken by the hand of God.* Thirdly, that lunatics, although readily influenced by the contagion of crime, are *much less apt to be impressed by the example of punishment.* On the other hand, to the first and second of these arguments it may be answered, that there is no true parallel between the case of a lunatic and that of a man seized with a malignant and contagious disease, because the life of the latter is of value to himself and others, while that of a mischievous lunatic is but a fitful and dismal dream, the termination of which, by natural causes, should be hailed as a blessing. In answer to the third argument, it may be urged that the effect of example in deterring lunatics from committing murder has been found to be considerable, if we may judge from the few instances in which the lives of madmen have been sacrificed by the law; *while the influence of example in promoting the propensity to murder and suicide has been most strikingly exemplified in this metropolis within the last two or three years.* In 1810, Bellingham, *unquestionably a lunatic,* was hanged for the murder of Mr. Perceval, and from that time until 1841, not a single political assassination was perpetrated in this country, throughout the most exciting and troubled times that have long been known in England. Oxford was acquitted for his late attempt on the life of the Queen, on the ground of insanity, *though, in our opinion, with very doubtful propriety;* and other similar attempts almost immediately followed. Not a week had elapsed from the trial of M'Naughton for the murder of Mr. Drummond, and his acquittal on the ground of insanity, ere another madman openly threatened the lives of her Majesty and Sir Robert Peel, and that of Mr. Goulburn was menaced by a person for whom, had he put his threats in execution, the plea of insanity would probably have been set up.

Such, we conceive, is a fair and simple statement of the question. It is one in which the most important interests of society, and that political justice which binds the state to protect the lives of its citizens, appear to be at variance with our feelings of humanity towards a dangerous and offending, *yet guiltless,* individual.

Since the foregoing remarks were written, the subject of the plea of insanity in cases of imputed murder has been introduced in the House of Lords, in a very elaborate speech by the Lord Chancellor, who suggested that the judges should be called, questioned, and required to explain what they deem to be the existing state of the law in relation to that great branch of criminal judicature. When we have heard the exposition of these learned and influential persons, we shall return to the subject, in the meantime embracing this opportunity of stating it to be our firmly established conviction that at the late trial of M'Naughton evidence was received which was not strictly admissible—that in the opening speech of the counsel for the prosecution, no reference to the *insanity* of the accused ought to have been made—that the opinions of medical men who had only heard *the trial* ought not to have been received—that the counsel for *the prosecution* should have replied to the arguments and pernicious statements of the counsel for *the prisoner*—that the judge should have summed up on *the whole case,* leaving it fairly to *the jury* to found their verdict upon the belief which they conscientiously entertained, after hearing the evidence, whether M'Naughton did or did not know that he was doing *wrong* when he levelled the pistol at the back of his unfortunate victim."—*From "The Lancet," March* 18, 1843.

"PUNISHMENT OF LUNATICS.

The comments on the acquittal of M'Naughton furnish abundant evidence of the popular ignorance regarding the exciting causes of maniacal acts, and of all the true methods of prevention. The verdict took the town by surprise; not because much doubt was entertained of the insanity of the culprit, but because a feeling had got abroad that it is becoming necessary for the public security to hang homicidal madmen, and that the jury would do gentle violence to their conscience by offering him up as a salutary example. Failing in this reliance, *the public have poured forth complaints through the ready columns of the daily press; which, without questioning the insanity of the offender—for, after the unequivocal evidence of the medical witnesses, it is felt that it would be indiscreet even for a newspaper "Justus" to adopt that course—contain a world of sneering at the judges, jury, and medical men, for suffering this plea to cause them to lose sight of the necessity, now so urgent, for the refining influence of a public execution.* One gentleman, in large type, regrets that while "our forcible Saxon language" supplies abusive words in abundance, the opportunity of using them against the prisoner, and thus whetting the blunted purpose of the jury, was wholly lost sight of; a second—*the Bard of Hope*—puts forth his views of medical jurisprudence in humorous rhymes, *indicating pleasant analogies between men and dogs, and suggesting knocking out of brains to be the only effectual mode of deterring both from giving way to the encroachments of cerebral disorder;* while *a host of other contributors show, by the equally playful style of their composition, their complete mastery of a subject which, owing to its intricate human interest, has hitherto usually been approached by less gifted minds with something akin to a feeling of solemnity.*

All this unmistakably indicates a desire for the legalized hanging of homicidal madmen; and, *taking the obvious road to popularity,* a member of the House of Commons readily rises to bring in the necessary bill. It is felt that the statute will have an ugly appearance, but that, from the sentimental scruples of pertinacious jurymen, there is now no other recourse. *The accumulated experience that the abolition of capital punishments has invariably been followed by a diminution of offences, is rejected as foolishness; reason must give way to anger; and a class of beings whom the common feeling of almost all nations has hitherto regarded with pity and forbearance, are forthwith to be brought within the scope of unmitigated vengeance.*

Now, although this may impart much comfort to those who have tremblingly watched the growth of "the false morality and morbid humanity of the day," *there are a few unpleasant considerations connected with it, which should not be overlooked.*

The punishment of an insane person, viewed abstractedly, must be regarded as an act of unqualified injustice. The common sense of mankind has led to the admission that it would be unjust to torture the victim of unsound lungs; and *we may consequently infer that, according to all human ideas of equity, it would be equally cruel so to deal with the victim of an unsound brain.* The new argument must therefore consist in this—"Waiving all question of justice or injustice, *death-punishment must be inflicted to deter other persons from yielding to homicidal impulses.* We concede that it involves an act of abstract wrong; but this act is necessary, because the Creator has so constituted the world that it is impossible for society, in maintaining the general safety, to avoid the wrongdoing. There is no consistent course of universal righteousness; some evil must be committed even by Justice herself; and the belief that a truly righteous act can lead to none but truly righteous consequences is a palpable delusion!" Now this argument, repulsive as it is from its subversion of all ideas of the moral harmony of the universe, rests wholly, it will be perceived, upon the assumption, *not only that death-punishment really has the effect of deterring men from the gratification of the homicidal impulse, but that it is also superior to every other remedy. Demand proof of the correctness of this assumption,* and *all the fabric upon which the clamour of the past week has been raised melts at once into thin air.*

We therefore require, that before the adoption of any measure for the extension of capital punishment, evidence shall be gone into with the view of

ascertaining the effect which the contemplation of death produces in the minds of those who labour under violent mania. Some instructive facts may easily be gathered by ascertaining the degree of precaution usually taken by offenders of this description to avoid the consequences of their acts. *The experience also of lunatic asylums would afford valuable evidence as to the degree of anxiety usually manifested by homicidal patients for the preservation of their lives; while the general statistics of homicide in countries where capital punishment has been abolished should likewise be consulted, together with all available facts regarding the effects of public executions in stimulating or repressing the destructive tendency. In a question of this kind, where facts are so abundant, it is preposterous to legislate without regard to them. We cannot tell the effect which any given procedure may have upon the mind of a monomaniac, except by a reference to the consequences by which that procedure has in similar cases been attended. For a person in sound mind to legislate from his own impressions regarding an effect to be produced upon the unsound, is about as rational as if one of healthy appetite were to prescribe from his own taste for the appetite of disease.*

The sources of the evidence here suggested are open to all, and none are competent to deal with the question save those by whom it has been examined. With *many* who have taken this trouble the result has been, *a conviction that every extension of capital punishment, so far from lessening, will be met by an increase of the number of homicidal acts.*

Nor should the wholesome spirit of investigation be limited to this point. A desire has been expressed that the discussion regarding the treatment of dangerous lunatics should be accompanied by some reference to a wider portion of the subject, and that an attempt should be made to define where responsibility ends and irresponsibility by reason of insanity is to be allowed. The obvious wish of those by whom this definition is demanded, is to procure a more limited interpretation than that which at present obtains; but in this, in whatever way the inquiry may be conducted—and *that it will be conducted calmly and fearlessly on all sides with a sincere desire of arriving at truth, there can be little hope—they will assuredly be disappointed. The doctrine long recognised by physiologists, that every manifestation of the mind depends upon the state of its material instrument the brain, and that the perpetration of vicious acts is inconsistent with a sound conformation and healthy state of that organ, is beginning to reach even unprofessional men*; and, leading them to inquire, *first, if it is just that human vengeance should in any case repay human crime? and next, if that vengeance has yet ever tended to a good result? it has engendered convictions, which, although they are now passively entertained, would in case of an attempt at backward legislation, find a voice sufficiently loud to render that attempt abortive.*

There is one point upon which those who argue upon the impropriety of treating insanity as insanity lay their greatest stress, which is peculiarly worthy of notice. It is alleged that the gratification offered to a love of notoriety by confinement in a madhouse operates as a constant temptation to vicious persons to qualify themselves for its attainment. Now, although it must be confessed that *the press, by holding up Oxford as a state-prisoner, and not as the imbecile creature which he really is, and by dwelling upon the exquisite delights of his abode and the distinctions conferred upon him, has done much to prevent creatures similarly disposed from looking with horror upon his fate*, we are still able to dispute this assertion by a reference to facts. *These stubborn monitors tell a different tale, and show that criminals almost invariably protest against the use of the plea of insanity.* Among recent instances, we may mention the case of the man Taylor, hanged for the murder of his wife, and also that of Mr. Pearce, the surgeon of Kensington, who *in order to invalidate the testimony to insanity cross-examined the witnesses with persevering shrewdness.* Even, however, if the assumption were correct, *it would be rather too bad that the community should justify the execution of an offender by alleging that course to be absolutely necessary in order to prevent themselves from giving way to the folly of regarding him as a lion.*

The idea which prevails of the existence among vicious persons of a sudden rage for madhouse enjoyments, coupled with an extreme dread of death, is one that could only be received in the absence of all reflection. The history of

society scarcely affords an example of an individual who has voluntarily sought for perpetual incarceration in a madhouse; while the daily police reports, and the unsightly railing on the Monument, testify to the eagerness with which the restless and depraved rush to the embrace of death. In the face of these circumstances, *the assumption that men whose impatience of restraint is so absolute as to lead them to assassination upon the slightest opposition, should be tempted to crime by the prospect of perpetual coercion, is egregiously silly; and the eagerness with which it has been received, merely shows how easy is the task of ministering to the prejudices of the hour.*

Finally, we would repeat, that *all consideration of these important questions will prove worse than useless, unless it be preceded by a careful examination of the facts relating to them.* The use of arguments based only on assumptions, even if sprinkled with the choicest gems of "our forcible Saxon language," can have no other effect than temporarily to obstruct the truth. *It is not because some writers regard death as the most dreadful infliction, or because others fancy that they would find themselves quite at home in Bedlam, that we are to legislate as if all men regarded death as the greatest evil or the restraint of a lunatic asylum as the supreme good.*

Amidst the absurdities with which we are threatened, it is satisfactory to observe that in one direction the public excitement is tending towards a useful end. *It is impossible that proper provisions regarding the premonitory symptoms of dangerous mania should any longer be delayed.* Two years back—before the attempt of Francis or Bean—we devoted much space to an urgent appeal for a precautionary system: but *it appears that the sacrifice of a valuable life was necessary to stimulate the public to a sense of their responsibility.*

The giant evils of our criminal treatment will remain untouched, until men shall have learned that the good of society and the good of the criminal are not only capable of simultaneous development, but that they must ever go hand in hand."—From "The Spectator," March 11, 1843.

"LAW OF LUNACY IN CRIMINAL CASES.

The law of lunacy in criminal cases being the prevailing topic of the day, it may not be unacceptable to our readers to state a few of the opinions of the eminent lawyers, of the past and present time, upon the subject. Coke says, there are four kinds of men who may be said to be *non compos mentis.* (Coke's Littleton, 247a.)—"1st. An idiot who, from his nativity, by a perpetual infirmity is *non compos.* 2d. He that by sickness, grief, or other accident, wholly loses his memory and understanding. 3d. A lunatic that hath sometimes his understanding and sometimes not—*aliquando gaudet lucidis intervallis*; and, therefore, he is called *non compos mentis*, so long as he hath not understanding. 4th. He that by his own vicious act, for a time, depriveth himself of his memory and understanding, or he that is drunken."

Lord Hale, however, appears to be the first to define the law of insanity in criminal cases, and he says, in his Pleas of the Crown, p. 30—"There is a partial insanity and a total insanity. The former is either in respect to things *quoad hoc vel illud insanire*—some persons that have a competent use of reason, in respect of some subjects, are yet under a partial *dementia* in respect of some particular discourses, subjects, or applications; or else it is partial in respect of degrees; and this is the condition of very many, especially melancholy persons, who, for the most part, discover their defect in excessive fears and griefs, and *yet are not wholly destitute of the use of reason; and this partial insanity* seems not to excuse them in the committing of any offence for its matter capital; for, doubtless, most persons that are felons of themselves and others, are under a degree of partial insanity when they commit their offences. It is very difficult to define the invisible line that divides perfect and partial insanity, but it must rest upon circumstances duly to be weighed and considered *both by judge and jury*, lest, on the one side, there be a kind of inhumanity towards the defects of human nature; or, on the other side, too great an indulgence given to great crimes."

In 8 Hargrave's State Trials, 322, Mr. Justice Tracy, in the trial of Arnold, says, "That it is not every kind of frantic humour, or something unaccount-

able in a man's actions, that points him out to be such a madman as is exempted from punishment; it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing no more than an infant, than a brute, or a wild beast; such a one is never the object of punishment."

Lord Erskine, when counsel for Hatfield, in 1800, said, 'That I am bound to admit that there is a wide distinction between civil and criminal cases. If in the former a man appears upon the evidence to be *non compos mentis*, the law avoids his act, though it cannot be traced or connected with the morbid imagination which constitutes his disease, and which may be extremely partial in its influence upon conduct; but, to deliver a man from responsibility from crimes, above all for crimes of great atrocity and wickedness, I am by no means prepared to apply this rule, however well established, when property only is concerned."

Again, in reply to the Attorney-General's observation in the same trial, that "to protect a person from criminal responsibility there must be a deprivation of memory and understanding," he said, that "*if these expressions were meant to be taken literally, then no such madness existed in the world;* in all the cases that have filled Westminster Hall with *the most complicated considerations*, the lunaties, and other insane persons who have been the subjects of them, have not only had memory in every sense of the expression, they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but *have in general been remarkable for subtlety and acuteness.* Defects in their reasonings have seldom been traceable—*the disease consisting in the delusive sources of thought*—all their deductions, within the scope of their malady, being founded on the immovable assumptions of matters as *realities*, either *without any foundation whatever*, or *so distorted and disfigured by fancy as to be nearly the same thing as their creation.*" Thus, it will be seen, he lays down *delusion* or perversion as its true character, and *not absence of any intellectual faculty.*

Sir Vicary Gibbs (when Attorney-General) said, on the trial of Bellingham, in 1812 (Collinson on Lunacy, p. 675), "A man may be deranged in his mind, his intellects may be insufficient for enabling him to conduct the common affairs of life, but, at the same time, such a man is not discharged from his responsibility for criminal acts." Again, "Upon the authority of the first sages in the country, *and upon the authority of the established law at all times, which law has never been questioned*, that although a man may be incapable of conducting his own affairs, he may still be answerable for his criminal acts, if he possesses a mind capable of distinguishing right from wrong." And Lord Mansfield, on the same trial, reiterating the same doctrine, said, that "if such a person were capable, in other respects, of distinguishing right from wrong, *there was no excuse for any act of atrocity which he might commit under this description of derangement.*"

Lord Lyndhurst, in Rex *v.* Orford (or Offord), 5 Car. and Payne, 168, stated to the jury, "that if the prisoner did not know, when he committed the act, *what the effect of it*, if fatal, *would be*, with reference to the crime of murder, they would acquit him."

It will be thus seen that the law of lunacy, in criminal cases, has been *so* interpreted that a man, *not* to be accountable for his acts, must *not* know the difference *between right and wrong.* This interpretation has arisen from the language of Lord Hale, which, whenever a point is to be gained, has been made to mean *rather more than it is presumed he ever designed.* It is quite evident that he admitted there is a partial insanity; that it is difficult to divide the invisible line between perfect and partial insanity, and that the matter must be left *to the judge and jury.* Now, *it is clear that Lord Hale had no knowledge of the late discoveries with respect to lunaties, and which tend to show that a man may commit a murder, being fully sensible of the wickedness of the act, and yet be unable to control himself*, having, as it were, an irresistible impulse to do the deed, while his intellectual, and *sometimes* his moral, feelings may be in full activity. (See the several cases given in the 2d edit. of Sampson's Criminal Jurisprudence.) It, therefore, becomes a question whether, in cases of homicidal insanity, the law is sufficiently pliant to admit

them within the principle laid down with respect to pleas of insanity. Lord Hale is the greatest law authority, and upon whose dicta all the subsequent rulings of the judges relating to criminal insanity have been based; and, therefore, it is to *his* words we must have recourse in arriving at a satisfactory answer. The only words which throw any difficulty in the way are those in respect of '*degrees of partial insanity*,' which he holds as no excuse for committing any offence for its matter criminal; but this, it is submitted, is qualified by the subsequent admission of the difficulties of drawing the line, and leaving the matter to the judge and jury; so that, if as in a late case, it shall be shown to the judge and jury that the prisoner is an homicidal lunatic, or belongs to any other class of lunatics, so that he cannot, *in the opinion of persons competent to judge of the matter in question*, be held to be responsible for his act, there does not appear to be any difficulty, so far as the law is concerned, in acquitting the prisoner; for the law relies on the evidence of the *medical* man in cases of injury to the body; therefore, if it can be shown that the same *medical* man is enabled to state *that a person may commit an act, criminal in itself, while he was conscious of its guilt, but at the same time was labouring under certain diseased functions of the mind*, the law will be bound to receive the evidence. This view is somewhat confirmed by the evidence in the cases of Rex *v.* Offord, where Lord Lyndhurst allowed evidence of the *previous* conduct of the prisoner; of Rex *v.* Hodge, Warwick Lent assizes, 1809; and of the late trial of M'Naughton. But, it is only right, that it should be stated, that in the trial of Bellingham the judge refused to allow the postponement of the trial for the purpose of obtaining evidence of his insanity. While upon the subject it may be mentioned, with reference to the observation of Lord Brougham, upon receiving evidence on M'Naughton's trial of the medical bystanders as to the impression made upon their minds, that Lord Lyndhurst allowed, in Rex *v.* Offord, the *same* evidence to be received! We do not, of course, enter into the question as to the *absolute* legality of receiving such evidence, but as his lordship has expressed a positive opinion upon the subject, it is right that it should be known that *two* such lawyers as Lord Lyndhurst and Chief Justice Tindal were not equally satisfied with his lordship as to its illegality."

W. O—N.

—*From the "Weekly Law Magazine," April* 1, 1843.

LONDON:
S. Taylor, Printer, 2, George-yard, Drury-court, Strand.

BOOKS PUBLISHED BY HENRY RENSHAW,
356, STRAND, LONDON.

TRIAL of DANIEL M'NAUGHTON.—Just Published, 8vo, sewed, price 2s. 6d., a COMPLETE and AUTHENTIC REPORT of the TRIAL of DANIEL M'NAUGHTON, at the Central Criminal Court, for the Murder of Mr. Drummond, with the Speeches of the Solicitor-General and of A. E. Cockburn, Esq., revised by themselves. By Richard M. Bousfield, of Gray's-inn, Student-at-Law, and Richard Merrett, Short-hand Writer.

"As a clear statement and exposition of facts, calm, dispassionate, and accurate, the pleading of Sir William Follet has undoubtedly great merit. There was no unseemly anxiety to press against the prisoner; the law was fairly, clearly, and candidly stated. * * * * On the whole, the law on insanity, in criminal cases, appears to us to be in anything but a satisfactory state; it is oscillating between the old doctrines and the new; between the theories of lawyers who lived three centuries ago and the theories and experience of learned physicians and physiologists who have lived in our own day. * * * We have only to say, in conclusion, that the physiologists of the newer school and medical jurists generally have found the ablest, the most eloquent, and the most lucid exponent of their theories since the days of Erskine, in Mr. Cockburn, whose reputation as the most eloquent advocate of the day is now fairly and incontrovertably established.—*Article on M'Naughton's Trial, in Frazer's Magazine for April*, 1843.

THE ANATOMY OF SUICIDE. By Forbes Winslow, Esq., Member of the Royal College of Surgeons. One vol. 8vo, cloth, price 10s. 6d.

"The whole is arranged with great care and precision. The subject is treated in all its bearings and ramifications, and nothing appears to be left undone that can in any way illustrate and exemplify the crime. There is a vast number of very interesting anecdotes and much original matter. The treatment of the subject is, indeed, entirely original. A great mass of information is brought together with laborious industry, and rendered interesting by the demonstrative powers of the writer. Altogether the book is highly valuable."—*Times.*

ON THE PRESERVATION OF THE HEALTH OF BODY AND MIND. By Forbes Winslow, Esq., Member of the Royal College of Surgeons. One vol. 8vo, cloth, price 7s. 6d.

"The author has evidently studied the subject of insanity well, and reflected deeply on it. He dwells forcibly on the necessity of studying the morbid manifestations of the mind in the early or incipient stage, before decided insanity is established, and is of opinion, that by a timely detection of the premonitory symptoms, and by application of appropriate measures, the development of the disease may in most cases be prevented."—*Provincial Medical Journal.*

THE PLEA OF INSANITY IN CRIMINAL CASES. By Forbes Winslow, Esq. One vol. 12mo, cloth, price 3s. 6d.

"The author has devoted his time and talents principally to the study and treatment of the diseases of the mind and nervous system. His views are original, and are entitled to the careful consideration of all those professionally engaged in treating this class of affections. The author has taken an enlarged view of the medical jurisprudence of insanity."—*Times.*

THE ORIGINAL: consisting of Essays on whatever is most important in Religion and Politics, in Morals and Manners, and in our Habits and Customs. By the late Thomas Walker, M.A., Cambridge, Barrister-at-Law, and one of the Police Magistrates of the Metropolis. Fourth edition, 8vo, cloth, price 8s.

A DIALOGUE BETWEEN A BILIOUS PATIENT AND a PHYSICIAN. By James Henry, M.D., Fellow of the College of Physicians, Dublin. Sixth edition, price 1s., sewed.